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DEMOCRACY & GOVERNANCE ASSESSMENT**

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Final Report

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The views and recommendations expressed in this report are solely those of the
MSI Assessment Team and are not necessarily those of USAID or the U.S. Government.

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ACRONYMS

GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IDB	Interamerican Development Bank
OAS	Organization of American States
WB	World Bank (International Bank for Reconstruction and Development)
USAID	United States Agency for International Development
CEPPRO	Centro Paraguayo para la Promoción de la Libertad Económica y la Justicia Social
CIRD	Centro de Información y Recursos para el Desarrollo
CADEP	Centro de Análisis y Difusión de la Economía Paraguaya
CEPES	Centro Paraguayo de Estudios Sociológicos
CODEHUPY	Comisión de Derechos Humanos de Paraguay
CISNI	Consejo Impulsor del Sistema Nacional de Integridad
IDEA	Instituto de Derecho y Economía Ambiental
INECIP	Instituto de Estudios Comparados en Ciencias Penales y Sociales
POJOAJU	Asociación de Organizaciones No Gubernamentales de Paraguay
ADEC	Asociación de Empresarios Cristianos
AGROPECO	Agropecuaria y Comercial del Paraná
ARP	Asociación Rural de Paraguay
CAPECO	Cámara Paraguaya de Exportadores de Cereales y Oleaginosas
CIP	Central de Importadores
FEPRINCO	Federación de la Producción, Industria y Comercio
UIP	Union Industrial de Paraguay
ANR	Asociación Nacional Republicana
MPQ	Movimiento Patria Querida
PEN	Partido Encuentro Nacional
PLRA	Partido Liberal Radical Auténtico
PPS	Partido País Solidario
UNACE	Union Nacional de Colorados Éticos
CNT	Central Nacional de Trabajadores
CPT	Confederación Paraguaya de Trabajadores
CUT	Central Unitaria de Trabajadores
CUTA	Confederación Única de Trabajadores Agrícolas
FNC	Federación Nacional de Campesinos
MCNOC	Movimiento Confederado Nacional de Organizaciones Campesinas
ONC	Organización Nacional de Campesinos
AJUMPA	Asociación de Juntas Municipales de Paraguay
COPLANEA	Comunidad y Planeamiento
OPACI	Organización Paraguaya de Cooperación Intermunicipal

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EXECUTIVE SUMMARY

In March 2004, a three-person team¹ carried out a democracy and governance assessment in Paraguay as a prelude to the development of USAID/Paraguay's proposed 2006-2011 Strategic Plan. The assessment team's overarching objective was to identify basic issues and problems with Paraguay's democratic development and to recommend strategic approaches and program areas for USAID/Paraguay's support for democracy and governance in the upcoming strategy period. The findings and recommendations of this assessment report are intended to inform and contribute to programming development during that six-year period. The assessment team adhered to the analytical framework developed by USAID's Office of Democracy and Development, both in the course of investigation and in the preparation of this report.

Paraguay's Principal Democracy Challenge

Fifteen years after the 1989 *coup* that overthrew the 35-year dictatorship of General Alfredo Stroessner and ushered in the transition to democratic rule, Paraguay's democracy reflects democratic form, but lacks quality, substance, and strength. The most recent reports published by *Latinobarómetro* reveal that Paraguay has the least citizen support for democracy over other forms of government (40%), including authoritarian, of all Latin American countries surveyed. This negative attitude towards democracy is fueled in part by financial hardships stemming from the regional economic crisis of recent years and the public's perception that democratic institutions have been unable to deliver concrete benefits to the citizens. Underlying this discontent is Paraguay's reputation of ubiquitous and systemic corruption spawned by decades of patronage and impunity. ***The principal democracy and governance challenge in Paraguay is the persistence and pervasiveness of a patronage system throughout government that has created a lack of transparency and accountability and a lack of capacity to fulfill the government function.***² Paraguay has a longstanding entrenched history of patronage that permeates all levels of government and hobbles democratic development in a multitude of areas that are explored throughout this assessment report. For Paraguay to make genuine and significant progress toward full consolidation of democracy, it must address the core problem of patronage.

Basic Democracy and Governance Findings

Despite relatively low levels of citizen support for democracy and democratic institutions, Paraguay demonstrates relatively high levels of ***consensus*** and a growing acceptance of the formal "rules of the game." The threat of a military *coup* or displacement of civilian government, although still present in the shadow and influence of former military strongman and populist leader Lino Oviedo, has receded and diminished substantially. Most major political actors see it in their interests to abide by – or appear to abide by – democratic rules and roles. Nonetheless, a culture of informality and persistent use of informal decision-making mechanisms undermine the role and validity of formal rules. Along the same lines, relatively clear structures and formal legal institutions, systems, and actors exist, but do not in practice provide an adequate substantive ***rule of law***. Constitutional and statutory guarantees of fundamental

¹ The members of the team included Benjamin L. Crosby, MSI, team leader and democracy-governance specialist, J. Michele Guttmann, MSI, an attorney and justice sector specialist, Bruce Kay, USAID/DCHA, USAID democracy fellow and democracy-governance specialist, and Diego Abente, independent Paraguayan consultant and political scientist. Dr. Abente's contribution may be found in a paper written for this exercise entitled "El Juego Político Paraguay: Características y Desafíos de una Democracia de Baja Calidad" (USAID/Asunción, March, 2004).

² Clientelism and patronage are interchangeable terms but clientelism and corruption are not. One may have corrupt clientelistic relations, but clientelism or patronage relations are not necessarily corrupt in and of themselves. However, it should be noted that monopolies, reduced competition, and insider benefits are frequently products of clientelistic or patronage systems – elements that can certainly give way to corrupt practices.

rights, freedoms, protections, and equality are not borne out in reality. The legal and judicial sector operates poorly and with limited capacity and a critical lack of professional and ethical standards, transparency, and accountability. The legal system is perceived as corrupt and protective of politically and economically powerful interests and actors. Citizen awareness of legal rights is low and access to justice is limited. Widespread perceptions of patronage and impunity for the powerful have led to minimal public confidence in the legal system. Underlying the numerous problems within the judicial branch is a critical lack of judicial independence. Manipulation and control of the judiciary, especially by the executive, has increased in recent years and will likely continue at high levels. Demonstrated commitment and interest in genuine systemic and institutional legal and judicial reforms, however, is low.

Paraguay is a relatively inclusive country with formal guarantees for full access and equality, and no obvious formal barriers that would exclude particular social groups from participation. Most *inclusion* issues arise from informal barriers that block access as well as participation, such as low education, poor infrastructure, geographic obstacles, and so on. The most significant informal barrier to participation is poverty and related problems, including glaring disparities between rural and urban populations. Women suffer disproportionately from economic deprivation, legal and political inequality, lack of access to political office and influence, and other social inequities and discrimination.

Competition has increased in the electoral sphere, as evidenced by free and fair elections and increasing multiparty competition, although national political control is still firmly in the reigns of the Colorado Party. Increased competition has been seen between the legislative and executive branches, although the judiciary and local governments (through centralization of resources) remain under executive domination. There has been a rapid growth of non-governmental associations at all levels and in all sectors, and a considerably increased role for civil society, especially at the local level through organizations such as the *comisiones vecinales*. Despite a less than amenable environment for media, there is substantial media competition and pluralism though editorial policy reflects both the interests and fears of economic elite ownership.

The quality of *governance* in Paraguay is seriously deficient. Corruption permeates and perverts the government function at all levels. Government employment and services provided depend to a great degree on partisanship and connections, rather than skills or qualifications. Government institutions have low resources and little capacity to provide public goods and services due to low budgets, an extremely low capacity for revenue generation (despite recent increases), and bloated bureaucracies that emphasize political favoritism over professional competence. Serious administrative and transparency issues hamstring development, including excessive and often inconsistent laws, poor enforcement, lack of information, and weak government audit capacity. Local governments are beginning to provide a strong environment and promising venue for citizen participation and accountability, although decentralization has been hindered by legal and coordination problems, lack of resources, patronage, and a lack of central government support. On the positive side, the current administration has declared a strong commitment to good governance and fighting corruption.

Recommendations for USAID/Paraguay's 2006-2011 DG Programs

The assessment team recommends that USAID/Paraguay concentrate its democracy and governance programs in the forthcoming strategy period on efforts to ameliorate the key democratic problem of patronage and its consequences. The possibility of tackling this problem head-on, however, is highly problematic. A number of potential strategies are suggested to address the problem indirectly as well as to focus on generating demand for accountability and transparency, strengthening governance capacity, and building constituencies for reform of political and economic processes that have perpetuated the patronage system.

The team's recommendations are directed at improving national and local government accountability, transparency and standards for better operation and access to the legal system, upgrading technical analytical capability within the legislative branch, and for initiating a broader national reform dialogue. Development of broader constituencies and mobilization of demand for reforming patronage processes is a common thread throughout these recommendations.

Public Sector Accountability: the assessment team recommends that the Mission work with reform proponents to create demand for upgrading standards and competencies for recruiting individuals to government positions. The idea is to work toward the establishment of an alliance of reformers from within the parties, the government, and stakeholders from business, media, and the CSO/NGO community to begin to inject standards and demands for skills and technical capacity into the appointment of government officials in addition to the regular requirements of party loyalty, political ties, family, or client relationship. Though patronage will not be dismantled in the near future, within that framework one can begin to change standards for patronage appointments and weed out corrupt officials or at least place them where they can do less harm. To carry this out it will be necessary to develop new incentives in the public sector through the creation of centers of excellence, and through fostering a culture of getting the job done effectively and efficiently by public recognition and reward for competence and merit. USAID should also provide assistance for the development of a code of recruitment standards for public officials – an activity that should be a collaborative effort between the political parties and the broader alliance (above) for public sector reform. USAID could also assist a bi-partisan lobbying effort in the executive branch, the Congress, and the political parties to create awareness and to help assure movement and consolidation of the broader alliance for public sector reform.

Local Government Accountability and Capacity: Like those recommendations at the national level, **much of the activity proposed here is aimed at increasing demand and building/mobilizing constituencies** for greater accountability and transparency. This would include activities such as working with reform proponents in local parties to analyze costs of the patronage system and to begin to develop practical alternatives; modify current training at the local level beyond technical people to include party activists; develop workshops to assess and better understand limits and barriers to local revenue generation; and work with *comisiones vecinales* to create demand for greater accountability through non-passive public hearings; and more frequent *rendiciones de cuentas*. The team also feels that the focus of citizen participation efforts should emphasize the creation of local public-private partnerships for the development of strategies that actually use citizen group resources in collaboration with those of the local government to solve problems. Finally the team feels that the role of the Contralorias Ciudadana could better use their very scarce resources (local chapters are unfunded and run by concerned citizens who volunteer their time) by shifting their role to one of broadening the constituency and raising the level of awareness and demand for greater transparency.

The team feels it important to continue to work in assisting in the improvement of local government capacity. More emphasis should be given to training and developing cost effective models for medium and smaller municipalities – particularly those that are mostly reliant on the center for transfers to finance budget – as well as training for development of cost effective models for increasing revenue – e.g., cadastres that have inflation-indexed revaluation mechanisms or local property sales comparability revaluation. Periodic regional conferences should be developed to allow local officials to share innovations in management of municipalities. Parallel to that, USAID might assist in the creation of a scheme to reward innovation and effectiveness in local government and should assist municipalities in the creation of centers of transparency and excellence in local governance by publicly rewarding municipal employees for a job well and honestly done

Rule of Law: the assessment team recommends continued assistance to civil society organizations to develop and sustain external demands and advocacy for reforms, and to create linkages and broaden the

base of civil society organizations involved with legal reform. USAID/Paraguay should seriously consider whether it is advisable to work directly with the judicial branch in light of various constraints, including a high degree of executive manipulation and infringement on judicial independence. Any such direct assistance should be conditioned on demonstrated meaningful commitment by the judiciary (by the end of the current Strategy) to improving the oversight, regulation, and enforcement of judicial selection and disciplinary standards. If the Mission opts to provide direct assistance, it should provide support to establish standards and enforcement measures for judicial selection and discipline, improve judicial administration to increase transparency and reduce opportunities for administrative corruption, and support efforts to build judicial independence. If the Mission opts not to provide direct assistance, it should work primarily with civil society actors. Some degree of flexibility will be required in the design and balancing of this support area, depending on how circumstances develop. Other recommendations include strengthening the Public Defender's Office and exploring the role and potential utilization of Justices of the Peace.

Given the tenacity of the DG problem as defined by this assessment, and given the difficulty of the current and likely near to medium-term political environment, it would be ill advised to set the bar of expectations too high. The recommendations made are within a tone of modesty but aim at generating demand, creating a much broader constituency, and establishing a more amenable environment for at least reducing some of the effects of Paraguay's pernicious patronage system.

I. INTRODUCTION AND BACKGROUND

Paraguay's history of democracy is a short one. With the overthrow of General Alfredo Stroessner in 1989, Paraguay began its first incursion into democratic governance, having spent most of the 178 years since its breakaway from Spain in 1811 under one or another form of military or civilian dictatorial rule. Paraguay's transition is not only new but has nearly been ignored by the rest of the world. As one observer argues, "Paraguay is the 'forgotten' transition in the corpus of literature analyzing democratization, despite that nation's emergence from perhaps the deepest authoritarian tradition in Latin America."³ Even though Paraguay has a long way to go before it reaches the ranks of a truly consolidated democracy, if judged by its history, Paraguay has made rather remarkable progress in a relatively short period.

Paraguay has not had a particularly fortunate history. Between 1811 and 1870 the country was under the rule of three brutal dictators (Francia, Lopez, and Lopez Solano) and had been through a war in which it lost 25% of its territory and over half the population. In 1877, military dictators were exchanged for the leadership of a two political party duopoly that dominates to this day. Though the military was displaced by civilian rule, it did not assure stability – between 1870 and 1932, Paraguay had thirty-four presidents and between 1904 and 1912 alone, there were nine. In part because of the general confusion surrounding the aftermath of the disastrous War of the Triple Alliance, and elite cleavages over the role of government, Paraguay's two party system was born – providing Paraguay not only with two of the oldest political parties in Latin America but also with nearly sixty years of mostly civilian, albeit frequently unstable rule. Between 1870 and 1932 the Colorados and Liberals⁴ ruled for roughly equal periods. The Colorados traced their roots to the Francia and Lopez legacy of authoritarian state socialism, while the Liberals saw themselves as the vanguard of limited government and civil liberties.⁵

With an opening to greater trade with the outside, Paraguay began the slow march back toward prosperity after 1900. But civil wars in 1904 and 1922, the stock market crash of 1929, plus the war with Bolivia over the Chaco in 1932 - proved to be insurmountable obstacles for the continuation of civilian rule. The Chaco war, in particular, increasingly mobilized social and economic demands from multiple economic and social sectors that the Liberal governments of the late twenties and early thirties simply were unable to meet. The combination of wars and the depression left Paraguay in the mid-1930s broke and with a woefully low standard of living. Working conditions in both the urban and rural areas were miserable; Paraguay's education system was the worst in South America, and the capital, Asunción, with the exception of a few neighborhoods, lacked paved roads, running water, sewage disposal, and electricity.

The Febrista *coup* (named for the month in which it took place) deposed the Liberals in 1936, bringing in a group advocating a more authoritarian, corporatist, one-party state – flatly rejecting the precepts of the preceding 30 years of Liberal government. This gave way to a string of Colorado Party/military governments that lasted through the next 50+ years. During this period the 1870 Constitution was scrapped in favor of one that enhanced the prevailing presidential dictatorship along with a powerful regulatory state.

While the period between 1936 and 1947 brought comparative stability, it was at the price of diminished civil liberties, outlawing of the Liberal Party, a far more consolidated partnership between the Colorado

³ Paul Sondrol, "Paraguay: Precarious Democracy" in Howard Wiarda and Harvey Kline (eds.), *Latin American Politics and Development*. Boulder, Colorado: Westview Press, 2000. Page 312. Sondrol provides a brief but lucid overview of Paraguay's political history. This introduction has taken liberally from that overview.

⁴ The Colorado Party is officially the *Asociación Nacional Republicano* (ANR), while the Liberal Party is the *Partido Liberal Radical Auténtico* (PLRA).

⁵ Sondrol, *op.cit.*, p. 317. Also See Diego Abente

Party and the military, and Paraguay's first true military dictator under General Higinio Morínigo. During the Second World War, Paraguay's regime was openly pro-Nazi and the country became "a nest of fascist intrigue."⁶ But the Second World War also brought much increased demand for agricultural products and a relative prosperity along with some liberalization of the Morínigo dictatorship and when Morínigo tried to re-institute authoritarian control in 1947, a military rebellion and civil war erupted.

The period between 1947 and 1954 was characterized by regime instability and jockeying for power by and among assorted military factions and a re-assertion of Colorado Party pre-eminence. Following the civil war in 1947, and in large measure due to the partnership between the Colorados and Morínigo, party affiliation had become the singular pre-requisite to civil service positions in the government and promotion in the armed forces. When General Alfredo Stroessner came to power through a coup in 1954, the Colorado Party was his mechanism of choice for consolidating personal power and authority. His management of the relationship between the military and the Colorados allowed him to become the longest-serving ruler in the Americas.

Stroessner changed the nature of the Colorado party and its organization. Under Stroessner, it became a truly national party through a nation-wide network of regional party divisions or *seccionales* and ward organizations or *sub-seccionales*. The Colorado Party became the "official" party and began to develop a more consciously populist tone – part of Stroessner's strategy to develop a broader, more popular base for his regime. Patronage then became the chief means to assure control and loyalty (though ample use also was made of secret police both to develop intelligence on groups – students, peasants, workers, the church, and the like – that might represent a threat and then to repress them before they could challenge the regime). Various purges left only those loyal to Stroessner (the *stronistas*) in charge of the military and the Colorado Party – and with that, *stronismo* became the requisite to access authority and its accompanying rents. Though clearly a "one-party" state, the vestiges of the two party system that had endured for over 60 years between 1870 and 1936 were maintained through a quota system that mandated that one-third of the seats in the Congress would go to opposition political parties, even though the Colorado Party always received more than two-thirds of the vote.

Political repression and the absolute obligation of personal loyalty kept Stroessner in power for over 30 years, but declining health and the "regionalization/globalization" of Paraguay through Itaipú brought new demands from a more mobilized expectant society, as well as factionalism and discontent from within the ranks of the Colorado Party. One group within the Colorado Party (the so-called traditionalists) favored a non-personalistic transition after Stroessner while another staunchly placed its loyalties with Stroessner's son, Colonel Gustavo Stroessner. But a military faction favoring the former approach and loyal to the traditionalist General Andres Rodriguez, led a violent coup in early 1989 overthrowing Stroessner and sending him into exile in Brazil. Three months after, elections were held with the Colorado Party candidate, Andres Rodriguez winning with a 74% landslide victory – thus assuring the continued dominance of the Colorados.

Rodriguez introduced a number of reforms that effectively ended the authoritarian framework that prevailed for the previous 50 years, established principles of checks and balances, and ended the military-Colorado partnership by prohibiting party membership for military officers. Rodriguez also began to move Paraguay back into the international community, ending decades of isolation.

The setting for Paraguay's transition to democracy presents some paradoxical elements. Rodriguez' efforts notwithstanding, some important characteristics of Paraguay's political structure did not change – the Colorado Party, a party clearly in cahoots with one of the most repressive dictatorships in Latin America, has remained in power to the present and the Liberals (the designated, mandated but still token

⁶ Sondrol, *ibid.*, p. 319.

opposition) have continued as the chief opposition. Opposition parties have now taken control of the Congress, but only as a coalition, since the Colorados maintain a plurality in both chambers. The rents of the state are still controlled by the executive and that is still solidly in the hands of the Colorado Party. Party loyalties are controlled and maintained through clientelistic means – patronage and the disbursement of rents. It is under that optic that we now turn to the assessment of Paraguay’s democratization process.

While not necessarily obligatory, the team has chosen to rather carefully follow the analytic framework found in the Democracy and Governance Center’s document, “Conducting a DG Assessment: a Framework for Strategy Development.”⁷ This assessment proceeds from a definition of the democracy governance problem, to identification of key actors and allies, an identification of key institutions in the Paraguayan democratization process, and then to a distillation of an overall strategy and recommendations for activities by the Mission to further assist in the democratization process.

II. DEFINING THE DEMOCRACY-GOVERNANCE PROBLEM:

A. Consensus

Elite Agreement on “Rules of the Game”: From the 1989 coup that opened the door to democracy onward, Paraguay’s political elites have wavered between supporting and subverting the political rules, using extra-constitutional means including violence or threats of violence to achieve their political goals. A threat of a military coup overshadowed most of the elections held during the 1990s, as General Oviedo and his military supporters sought, unsuccessfully, to prevent their rivals from assuming power. An attempted coup by Oviedo against President Wasmosy (1996) the assassination of Argaña in 1999, a putsch in 2000 against González Macchi – all these events signaled that the democratization process remained delicate, and that disloyal elites within the regime maintained a capacity to disrupt constitutional order when it suited them.

Though hard to discern amid the instability, the rules of the game have in fact gained traction since the constitution took effect in June 1992. First, the autonomous Tribunal Superior de Justicia Electoral (TSJE) has fulfilled its role as arbiter of an electoral process deemed free and fair by international standards. Elections outcomes have demonstrated a high degree of acceptance among rival parties. Although the presidency has yet to be held by a non-Colorado candidate, the 1993 elections and subsequent clean elections in 1998 and 2003 have produced peaceful party alternations from official to opposition parliamentary control, affording the legislature a budding independence from the executive. Greater legislative autonomy in turn has strengthened checks and balances among branches of government.

Second, the Paraguayan armed forces are under civilian control, no longer play an overt political role and have lost considerable influence.⁸ The link between the Colorado party and the military leadership meant that a coup could always be considered a latent risk in Paraguayan politics until 1999. As the attempt on May 18, 2000 showed, however, the capacity of the military leadership to orchestrate a coup is restricted by both domestic and external factors. The political actors who might instigate a coup are increasingly

⁷ Center for Democracy and Governance, Technical Publication Series, November 2000. The reader is invited to refer to that document for a fully detailed explanation of the framework and its logic.

⁸ A fact reflected in recent studies. See for example CIRD/USAID surveys (2003)

marginal to the political process.⁹ Coup threats have receded with Oviedo's exile in Brazil and some observers argue that his supporters have begun to trickle back into the Colorado fold.

Third, events that might have triggered a political crisis in the past have been greeted with relative equanimity among political groups in recent years; for instance, the Electoral Tribunal's decision to declare Liberal party candidate Julio César Franco as Vice President in 2000 after a closely divided vote. Collectively, these events signal a growing acceptance of democracy among semi-loyal elites as "the only game in town."¹⁰

Society-Wide Consensus : Paraguayan society shows far more consensus than division. Sovereignty and national identity issues do not beset Paraguay as they do elsewhere. Nor do violent opposition groups, ethnic/religious cleavages and conflict or regional separatist movements threaten the *status quo*. Yet diffuse support for democracy in Paraguay is low and eroding. Fewer Paraguayans currently express a preference for democratic institutions. According to CIRD (2003), those who accept authoritarian government (38%) edge out those who agree, "democracy is preferable to other forms of government" (33%).¹¹ *Latinobarómetro* likewise shows citizen confidence in institutions ranks among the lowest in the region and that regime preference for democracy is at 40%, 15 percentage points lower than the mean for Latin America.¹²

It is not that Paraguayans reject the idea of democracy *per se*, since the survey data also show that a majority value concrete aspects of democracy such as freedom of expression and rights protection.¹³ Rather, it reflects the abysmal performance of democratic institutions to deliver benefits to its citizens, mixed with nostalgia for *Stronismo*. "I was happy then and did not know it," goes the refrain.

Second, informality, organized crime and corruption are expanding. At least two-thirds of economic activity takes place outside the formal sector, making it hard to speak of a "rule-based society" with a straight face. Exacerbating the problem is the growth of organized crime in the unruly region at the convergence of the Paraguayan, Argentine and Brazilian borders. Elites with ties to the massive money laundering, piracy, contraband and drug trafficking markets have come to wield an enormous and growing influence not just around Ciudad del Este, but nationally as well. They have begun to enter the political fray as well. Through financing of electoral campaigns, mafias are popularly perceived to wield more influence in political decision-making than ever before. Despite a proliferation of corruption scandals, few individuals have been prosecuted or punished for corrupt practices, a fact that reinforces the public perception of impunity for high-ranking officials.

Society-wide consensus on formal rules is more theoretical than real in a country where informality is the norm. Yet most political actors see it in their interest to protect the constitutional rules if only to advance what one analyst calls "low quality democracy."¹⁴

⁹ Interview with Carlos Martini, professor at Catholic University, Asuncion. March 2004.

¹⁰ Interview with Jose Nicolas Morínigo. March 2004

¹¹ USAID & CIRD (2003) page 190.

¹² *Latinobarómetro* (2003) It should also be noted that in the same survey, 44% said that in "certain circumstances an authoritarian government can be preferable to a democratic one."

¹³ Vial, Alejandro, "Sociedad Civil y Cultura Política" in CIRD, p. 162-163.

¹⁴ Diego Abente Brun, "El Juego Político Paraguayo: Características y Desafíos de una Democracia de Baja Calidad" Report produced under USAID contract. (2004).

B. Rule of Law

A credible rule of law supported by a well-functioning justice system that resolves conflicts fairly and efficiently in accordance with clearly established and respected legal norms is essential to support democratic governance. The Paraguayan legal system falls far short, and enjoys the least public confidence of all public institutions in the country. The justice system is regarded as corrupt, inefficient, and weak. The interests of the powerful dominate and manipulate the system with impunity. Despite progress in certain areas of reform, *e.g.* criminal laws and procedures, the judicial system has not confronted rampant corruption or provided security of personal or property rights.

Relatively clear structures and formal legal institutions, systems, and actors exist, but do not in practice provide an adequate substantive rule of law. Constitutional and statutory provisions contain substantial protections and assurances of fundamental broad-based individual rights, freedoms, and equality. In practice, however, these precepts are not meaningfully applied or enforced. Many of the failures or violations of the formal legal system and processes inure to the benefit of politically and economically powerful interests and actors, and disproportionately harm the poor.

A critical lack of professional and ethical standards, transparency, and accountability has contributed to a legal and judicial sector that operates poorly with very limited capacity and has not earned the public's public confidence or respect. These deficiencies are particularly evident in training, selection, monitoring/oversight, discipline, and termination of judges as well as attorneys.

The legal and judicial sector has failed to operate to contain rampant corruption in both the public and private sectors, and has earned its own reputation for endemic corruption, political and economic patronage, arbitrariness, and weak administrative capacity. The law has protected the powerful at the expense of vulnerable populations, thus contributing to socioeconomic inequities. Despite legal guarantees of due process and other individual rights, those rights are not ensured in practice and are breached most frequently with respect to indigent defendants (resulting in a so-called "criminalization of poverty").

Issues of personal security (*i.e.*, crime) and human rights violations, while extant and certainly serious, are not as significant or widespread as they are in many other Latin American countries and do not appear to constitute a threat to democratic development. More significant are the gross disparities and injustice caused by poor peoples' inability to secure adequate legal defense and representation, while the wealthy and the political elite are perceived as operating with impunity above the law.

Insecurity of property ownership has become a significant problem in Paraguay, both legally and politically. With increasing frequency, private lands are subject to invasion by groups of *campesinos* that sold their lands, have few resources, but can still mobilize. Attempted evictions of squatters from private property have created conflicts and sometimes resulted in violence. Resolution of these confrontations raises social and political issues, as well as difficulties enforcing legal ownership rights. Insecurity of property ownership and occupation problems in Paraguay have discouraged some new businesses from entering the country, and have persuaded some others already operating in country to leave.

The legal and judicial sector's lack of capacity and public confidence has created a backlash against judicial authority and nascent attempts at independence, and has led to executive and parliamentary control and manipulation of the judicial branch by the current administration, culminating in the termination and replacement of the majority of the Supreme Court. These actions were framed as anti-corruption and reform measures, although the majority of judicial removals did not rely upon specific allegations of corruption and did not involve institutional reform but, rather, the substitution of individual Supreme Court justices based on political considerations and negotiations. This assumption and exertion

of control over key judicial actors will likely have long-term institutional effects that will further subjugate the judicial branch and diminish prospects of an independent judiciary for the foreseeable future.

The existence of a credible and reliable rule of law has become increasingly recognized as a critical factor in Latin America's economic, social, and political development, and improvements to the justice sector were frequently cited as an urgent necessity in Paraguay. Although the establishment of a transparent and reliable legal system was widely cited as an urgent development goal, political will for reforms that would address the above issues has been weak.

C. Competition

The genuine party and electoral competition that emerged in Paraguay in the 1990s, perversely, has spawned an intense rivalry for state patronage at national and local levels, which, in turn, has exacerbated the country's serious governance problems. As the old Colorado-dominated system was forced to give way to more conventional bi-party competition, the patronage machinery once controlled by the Colorado party became accessible to the Liberal Party and to emerging third party alternatives. The multiplication of patronage jobs and the allocation of government jobs based on loyalties rather than expertise has swollen the public sector payroll while depleting state capacity. The resulting quality of public services in education, health, social security, and justice is exceptionally low – so low in fact, that public support for Paraguay's democracy has deteriorated and remains among the lowest levels in Latin America.

Although the 1992 constitution does provide for intra-governmental checks and balances, the judiciary lacks independence, the legislature has only begun to assert its authority to oversee executive and judicial operations, and actions taken thus far have been highly politicized. The resulting impact of this fledgling intergovernmental competition on the corruption problem consequently has been negligible. Paraguay's legislative oversight powers include the power to investigate and, if necessary, impeach the highest executive and judicial officials for corruption and dereliction, to designate Supreme Court candidates, to weigh in on the decisions to discipline corrupt or negligent judges, and to intercede in local governments in the removal of locally elected officials. Notable assertions of legislative independence in the last decade, such as the efforts to impeach President Gonzalez Macchi, are the exception to the general rule that oversight and the inter-branch competition and accountability it engenders remain nascent.

As formal barriers to association were lifted after 1989, civil society began to develop contributing to a much broader competition of ideas and interests. Civil society is still weak in Paraguay but the increase in the number and diversity of groups since the early 1990s has helped to broaden the political debate. That wider debate is reflected in the participation of the small-scale *comisiones vecinales* that have proliferated in nearly every municipality, the mobilizations and demonstrations by *campesino* federations, strikes by public sector employees; and the legislative lobbying activities mounted by economic groups and NGOs. Paraguayan media have been allowed to operate, broadcast and publish without significant government interference, though most media sources are intertwined with business and political groups whose interests exert a strong influence over news and editorial content. There remains a restrictive legal environment in Paraguay for media, as evidenced by the proliferation of libel and slander lawsuits against print and broadcast media.

D. Inclusion

Paraguay is a relatively inclusive country with no obvious formal barriers that would exclude particular social groups from participation. The 1992 Constitution and other laws enacted since the dictatorship are

expansively written to guarantee equality and assure formal access. Meaningful participation, however, largely depends on and stems from membership and participation in formal political parties and processes. Largely, political parties define the nature and parameters of participation.

Most inclusion issues arise from informal barriers that block access as well as participation. The most significant of these barriers is poverty, which generates or contributes to numerous other obstacles to inclusion. Paraguay has one of the highest regional rates of extreme poverty and closely linked to poverty are critical disparities between rural and urban populations. Life in rural areas presents generalized but serious barriers to social advancement and economic development, including limited availability of and access to State-provided social services. Geographic obstacles such as transportation difficulties and lack of roads and infrastructure exist throughout the country, but are magnified in rural areas and more difficult to overcome due to higher levels of poverty and isolation. Linguistic obstacles for persons who are monolingual (in Guaraní) are more prevalent in rural areas. Ethnic barriers exist, but to a much lesser proportionate extent than other Latin American nations with larger indigenous populations. In Paraguay, less than 2% of the population is indigenous, and is concentrated in the Chaco and northern areas of the country.

Paraguay's educational and literacy levels are low, with pronounced differences between urban and rural populations. Figures from 2002 (the latest available year) reveal that while 54 of 100 students graduate primary school in urban areas, only 7 of 100 rural students complete primary school. National educational plans have been developed with central government financial backing, and have greatly improved quantity and quality of coverage, but significant educational disparities and limitations remain that impede full participation.

Voter participation rates are relatively high and there appear to be no significant structural barriers to voting. Efforts are underway to increase voter registration, which is currently estimated at 80% of eligible voters. Voter registration is lower for women than men (46% women; 54% men). Citizen participation and organization is relatively low, although it has increased in recent years. *Campesino* groups and public unions are particularly active and politically powerful, especially when mobilized in larger numbers under umbrella organizations. Issues concerning property ownership and use have multiplied with the recent economic crisis, increased marginalization, homelessness, invasion and occupation of private properties, and resultant social instability. Consequently, *campesino* demonstrations and confrontations with authorities have increased. NGO's and CSO's are comparatively weak and lack cohesion and strategic planning, but have expanded and increased activities over the past five to ten years.

Citizen participation at local levels has increased with the advent of locally elected mayors and beginning efforts at decentralization. Local citizen participation has been channeled primarily through *comisiones vecinales*, or neighborhood associations, which primarily seek physical improvements through public works. Although activities and interaction have clearly increased at this level, the long history of nonparticipation and lack of government accountability and transparency still pose substantial barriers to meaningful involvement in public affairs by citizens.

As in many other countries, women in Paraguay have historically been the most impoverished and the least powerful members of society, both in their individual lives in their ability to influence politics or shape social or economic policies. Women suffer disproportionately from economic deprivation, legal and political inequality, and social inequities and discrimination. Women in Paraguay, especially in rural areas, are informally excluded due to lower education rates and higher illiteracy, a traditionally *machista* and subjugated society that affords little power or participation to women, very high regional maternal mortality and birth rates, less access to land, and higher levels of extreme poverty than in many other Latin American countries.

The 1992 Constitution guarantees equality of men and women in civil, political, social, economic, and cultural rights, and assigns responsibility to the State to facilitate and effectuate genuine equality and full participation of women in all spheres of national life. A *Secretaría de la Mujer* was created in 1993 to protect and ensure the fulfillment of women's constitutional rights. From 1993 – 2003, the *Secretaría* succeeded in opening some political spaces and legal reforms on behalf of women, largely due to the personal commitment and political strength of the *Ministras* and the development of productive collaborative efforts with women's NGO's. During that time, the *Secretaría* secured seats on the reproductive health council, cabinet meetings, and national economic policy team, assisted in the passage of anti-domestic violence legislation, supported a 20% quota law in party primaries, implemented labor training and employment programs, and developed national plans for sexual and reproductive health, as well as equality of opportunities.

President Duarte's administration has discontinued and cut funding for various women's programs, has removed the *Secretaría* from the national economic teams and cabinet meetings, has appointed a *Ministra* considered to be unqualified and a religious extremist to head the *Secretaría*, and has focused on handout programs for women in lieu of policy or institutional change. The current administration is viewed as conservative and paternalistic with respect to women's rights and has taken actions that have undermined or eliminated some prior accomplishments in that sector. Fears were expressed that the *Secretaría* will lose all authority and independence and become irrelevant.

Political parties are viewed as closed to women, especially interior party elections and primaries. The quota law does not have procedures or sanctions for enforcement, and in practice has resulted in fewer and lower positions for women on candidate lists. The percentage of women in the Senate has decreased, although gains have been seen at other levels, e.g. two women occupy cabinet level positions, several have been appointed to sub-cabinet positions, the first female governor was elected in 2003, and the first female Supreme Court justice was recently appointed. Although still low, women's representation has also increased at the local level.

E. Good Governance

If good governance is defined by the presence of transparency, accountability and the rule of law¹⁵, Paraguay has serious shortcomings on most counts. Even if the relative novelty of Paraguayan democratic forms is taken into account, there remain enormous governance problems. Corruption permeates and perverts government functions at all levels. Mechanisms for vertical and horizontal accountability for public actions and activities are increasing but are still few and far between – a factor that both contributes to and is caused by the lack of transparency. Public information is difficult to obtain and press liberties are constrained by the fact that public officials may criminally prosecute or sue private individuals and the press for damages under Paraguay's defamation laws. Within the press, capacity for investigative journalism is still low but is exacerbated by political interests of newspaper owners. The notion of public accountability even through simple and relatively ineffective mechanisms such as an annual *rendición de cuentas* by government officials is limited. A growing practice at the municipal and departmental levels, the *rendición* consists of a year-end statement by officials about activities – but the report is generally not subject to public question or scrutiny. Even this relatively innocuous mechanism is virtually unknown at the national level.

As noted earlier, formal mechanisms or infrastructure for the rule of law do exist and indeed are quite well developed even down to the lowest level (e.g., the juez de paz). Nevertheless, if application and

¹⁵ See USAID, *Conducting a DG Assessment: a Framework for Strategy Development*, Technical Publication Series, Center for Democracy and Governance, USAID/Washington. P. 24.

enforcement in a fair equitable fashion are the measure then the system falls quite short on capacity. Excessive and often confusing and contradictory laws and regulations produce what one of Paraguay's new Supreme Court Justices characterized as *un manicomio juridico*.¹⁶ Low pay and inadequate funding for operational expenses¹⁷ encourage corruption at the lower levels of the court, which appears to permeate both administrative and legal support staff. The capacity for administrative and procedural delay and regulation requiring dismissal once a case has "timed out" further muddies procedure and due process. Considerable effort (through IDB resources) has gone into the construction of new court buildings in the interior – but the lack of operational budget leaves the impression of empty shells and the incapacity to provide basic services such as public defense.

Recent initiatives (such as establishment of the office of *Procurador General*) to provide mechanisms to clean up certain aspects of corruption in the state are plagued by lack of resources throwing into question the seriousness of the intent. At the same time another vital institution for dealing with state corruption issues, the *Contraloria* (state auditor), is hindered by credibility problems and a dearth of technical capacity. The inability to provide sound preparation of cases to be prosecuted before the courts contributes to delay, eroding credibility, and virtually assures that the alleged transgression will go unpunished. Although the President has at least voiced a strong commitment to fighting corruption, the lack of capacity in the institutional framework presents a major barrier to fulfilling that promise.

In general, state or governmental capacity to deliver services is low and hindered by excessive levels of staffing. Because of the persistence and dominance of patrimonial mechanisms for recruitment of personnel, skill or technical qualification is rarely considered a requirement to fill a post. Indeed, one observer argued that most seeking employment in the public sector are not looking for "*un trabajo, sino un cargo*" – where skill is simply unimportant. Patronage, nepotism, and favoritism all contribute to a state governance framework in which capacity to carry out the task is secondary. This, combined with a consistently low budget (as a percentage of GDP) and a low capacity to generate tax revenue, has meant that a very large proportion of expenditures are for salaries.

Since the democratic transition began in 1989, the government has become increasingly a paymaster of salaries rather than a deliverer of services. Although salaries are generally paid (even if often months behind schedule) there is little money left over for operations (purchase of fuel, supplies, and depreciation) and even less for investment. Over the last five years the government has run consistently high deficits and though there has been some improvement in increasing fiscal revenues, it has yet to reach the point of covering current deficits much less to begin investing in repair and glaring infrastructure needs.

In one of our interviews, Paraguay was characterized as a predatory state – a situation where the state and its policies serves primarily as a mechanism to extract rents for the benefit of a very few, powerful economic groups. It would probably be more accurate to characterize the state more as a "partocracy" than a predatory state since the state appears to serve political party interests. The ANR uses the state to serve its own particular interests and provide rents to support party operations.¹⁸ Although the PLRA has been out of power for nearly 60 years, scattered evidence at the local level would indicate that given the

¹⁶ This characterization was directly applied to the state of administrative law, an area often overlooked but one of the key areas to the improvement of transparency and reduction of corruption. It is through the loopholes in or the complications and/or lack of understanding of administrative law that a significant amount of corruption slips.

¹⁷ Whether the courts are receiving their constitutionally allocated share of the budget is unclear and the subject of debate. See n. 24, *infra*. Regardless, the fundamental problem is that the mandated 3% received of a small national budget will still be a small amount of funds.

¹⁸ This is not a particularly uncommon phenomenon – the PRI in Mexico is one of the more notorious examples of how the state has served the party but there are a multitude of examples from elsewhere in the world.

chance of power at the national level, it would be little different than the ANR. Since the ANR is a poly-class party with a wide variety of interests represented including small and large farmers, commerce, labor unions, state employees, and the military, it is difficult to attach the label of predatory state.

The preeminence and dominance of political parties, and particularly of the Colorado Party has shifted the locus of accountability for satisfying demands by the government away from the electorate (where it resides in fully functioning democracies) to the political party. If the party can find jobs for its militants, and if funds continue to flow to the party coffers (through a percentage of salaries of government salaries, funds from state enterprises such as Petropar and the bi-national companies in charge of the hydroelectric facilities shared with Brazil and Argentina) to defer the party's operating expenses, then accountability will be satisfactory. While internal primaries have reduced the power of the party central committees at the local level and brought both municipal officials and members of the Cámara de Diputados closer to the electorate, they remain strong at the national and department level – elected officials know that if they do not look to the party first in terms of decision-making and satisfying demands, the electorate will not be in a position to save them. The political parties remain in control of access to power and access to benefits – if one does not belong or have access to the party in power, demand satisfaction would be quite limited.

Progress toward democratic transition and the democracy-governance problem

Paraguay has certainly come a long way since 1989 and the overthrow of Alfredo Stroessner, but there is still some distance to go on the path to a fully consolidated democracy. With the overthrow and the enactment of the 1992 Constitution, authoritarianism disappeared. The primary infrastructure of democracy has been put into place: elections are mostly free and fair; there is a fully operational legislature and judiciary; local government is becoming more representative; freedom of speech exists; new political parties have arisen in response to unmet demands; and civil society is beginning to emerge as an important actor. Nevertheless, the quality and governance capacity of many institutions is tentative.

The principal democracy governance problem can be defined as the persistence and pervasiveness of a patronage system throughout government that has created a lack of transparency and accountability and a lack of capacity to fulfill the government function. Patronage permeates all levels of government. It is the direct cause of bloated bureaucracies at the national, departmental, and local levels and contributes to an inability of each of those levels to finance little more than salaries. Before Paraguay can make much progress toward full consolidation of democracy it must begin to address the problem of patronage and the dysfunction it produces.

Fifteen years into the democratic transition, much of the democratic infrastructure has yet to be institutionalized and still does not function very adequately. As one observer put it, “Hemos ganado la palabra de la democracia, pero todavía no hemos ganado la acción de la democracia”.¹⁹ The process of transition among institutions is also uneven. Elections are now considered quite free and fair, to the point where some argue that no further assistance is needed. The judiciary, on the other hand, has a long way to go to achieve independence and to provide the quality of due process and access found in a fully consolidated democracy.

The threat of a coup appears to be fading into the distance, with a much shrunken military still suffering the ill-effects of two failed attempts at recovering power. Of greater worry is the precarious state of the socio-economic environment and its potential for provoking social violence and recurrence to coercive and/or violent means (such as land invasions) to achieve social objectives. Several individuals interviewed by the team expressed the concern, or perhaps fear, of some populist demagogue capitalizing on such discontent, such as Chavez in Venezuela or Kirschner in Argentina.

¹⁹ Put colloquially, “We can talk the democracy talk, but we still don’t walk the democracy walk”.

Patronage contributes to a host of ills that affect the adequate functioning of the government and government officials be they a judge in the Supreme Court or a customs clerk. Patronage in government dampens productivity – it is not about the job and a good performance – it’s about the party you belong to and who you know. An entrenched patronage system allows corruption to take place unabated because to punish wrongdoers generally means affecting the interests or some client of a party higher-up. Patronage is deeply rooted in Paraguayan society and politics – it is central to the dominance that has been maintained by the Colorado Party for the last sixty years, but it is also central to the Liberal Party where and when they have held power.

III. POLITICAL ACTORS AND THE POLITICAL ENVIRONMENTAL CONTEXT

Any serious advance toward solving the DG problem as just outlined will depend in large measure on the capacity of the government to effect and implement change. That capacity in turn, will depend on the nature, interests, and resources of important political actors within the system and the degree of support or opposition these actors manifest toward the government. In this section we will examine the degree of support for the current regime and assess the government and other key political actors and their interests and resources to get a sense of what they bring to the table both with respect to either fostering or inhibiting change. While most of the discussion is centered in the present, it is activities, actions, and trends that are being developed now that will have a large effect on what happens two or five years from now. And the government’s capacity to attend to differing needs of key political actors will play a large role in determining the balance of the political environment over the next two to five years.

The context for meeting demands: For a government to succeed in meeting demands it must have resources to offer in exchange for actual or potential support as well as to invest in solving the general problems of society – e.g., education, health services, public works and infrastructure, and security. However, during most of the period of Paraguay’s transition to democracy, the government’s economic/fiscal resource base has either been in stagnation or decline. Since 1990 there has been a decline of approximately 40% in per capita GDP as measured in dollars – resulting in a generalized impoverishment of the population. Although some of this problem has been buffered through increased public sector employment (which has grown by roughly fifty percent from some 150,000 in 1990 to an estimated 220,000 in 2003), the public sector budget has grown only slightly. What little growth there has been in the budget has been diverted to the payment of salaries or public debt, severely limiting the government’s capacity for investment.

Since the mid-1990s sustained and increasing fiscal deficits have caused public debt to rise from 15% of GDP in 1990 to nearly 50% of GDP in 2001. Paraguay’s growing difficulties in managing debt caused a near-default in 2003; but despite the narrow escape, problems of arrears continue to plague government finances. Several factors have limited the government’s ability to deal with its financial problems and debt management: first, Paraguay has one of the lowest tax burdens in Latin America, reportedly high levels of IVA tax evasion, and corruption in the customs service (one of the major sources of fiscal revenue); second, financial crises have rocked the banking sector, contributing to further indebtedness and decline in confidence; and third, an informal sector which occupies an increasing share of Paraguay’s economic activity (some observers argue that it is now twice the size of the formal sector) and which remains beyond the purview of tax authorities. Continued lack of private investment, low to nil investment by the public sector, tax evasion, and an increasing share of economic activity (through the informal sector) escaping fiscal obligation and oversight, presents clear challenges to the Duarte government’s capacity to “deliver on promises”.

Support for undertaking change: Bringing about serious change in the current context of pervasive patrimony, lack of accountability and corruption will produce many political and economic “losers” – taking action against these problems will require significant support for the government in the face of powerful and entrenched opposition. In order to examine support for the government and to begin to speculate about what that support will look like in eighteen months, we will use the technique known as political mapping.²⁰ The mapping technique is also very helpful for determining what the government might or might not be capable of doing to initiate, implement, and sustain new policy measures and actions.

Social sector support and opposition: At the time of this assessment, President Nicanor Duarte Frutos enjoyed a very high level of popularity in the local polls. Some argue that this is in part owed to the fact that Duarte is the first President since the 1989 *golpe de estado* not connected to *stronismo*...others argue that he is at least giving the impression that he has begun to clean house and set the country on a new course...while still others argue it is simply the honeymoon effect. More than likely, it is a combination of all three factors that accounts for his current popularity in the polls.

While Duarte’s popularity is certainly borne out on Political Map One²¹ at the same time it appears to be rather more tentative. Much of the popularity reflected in the polls comes from the “social sectors”, which though important for getting elected contribute little to the need for concrete mobilized support between elections. Among women, small farmers, campesinos, and the urban middle class (especially in the urban areas in the interior), Duarte finds a good deal of support, but since these sectors are not easily mobilized and remain loose and amorphous, it is not as useful as the support provided in other sectors. On a hopeful note, though the administration is now into its 7th month, Duarte’s popularity has lost little of his early support. Support from these sectors is maintained in part through messages that call for more recovery of state lands (presumably to be used to attend to demands of landless campesinos), by statements such as “voy a pulverizar la corte”, through calls for income tax that would mostly affect the wealthier, for a crackdown on tax evasion among corporations, and for more vigorous action against corruption.

On the other hand, some of the more powerful groups in the social sectors appear opposed to the Duarte regime and its policies. Large farmers, in particular those with export crops, clearly oppose recent measures by Duarte to impose an export tax on soybeans. Industrialists in the formal sector are concerned about the growth of the informal sector and the formal sector’s declining competitiveness. To the extent that Duarte is unable to make serious progress in reducing the size and scope of the informal sector, opposition will remain and likely become increasingly mobilized. There is similar opposition by urban workers as they have lost jobs, partly due to the industrialists’ declining competitiveness. There is a high degree of uncertainty whether women will make progress under Duarte – owing in part to the expressed religious conservatism of Duarte and his wife, and recent actions, which some observers argue, will

²⁰ The main intent of political mapping is to illustrate support bases for and existing or potential opposition bases to the government and its political agenda. Groups or actors denoted by denser or larger letters are the more powerful or influential. Generally, the more groups or actors found in the support sectors, the better, but if powerful or influential actors remain outside, then the worse. To the extent that the government is able to muster resources to satisfy demands of different actors, the greater its overall level of support. Once the government is unable (or lacks the resources) to satisfy demands of differing actors (including those in the opposition), the less support it will have and the less it will be able to do. A more fully developed description of political mapping can be found in Chapter 8 of Derick W. Brinkerhoff and Benjamin L. Crosby, *Managing Policy Reform*. (Hartford, Connecticut: Kumarian Press, 2001).

²¹ See page 49.

further limit the role of the Secretaría de la Mujer.²² Of concern is the presence of the small informal sector in the “anti-system” area of opposition. This group is mainly made up of marginally employed and small business in the commercial sector (for sale of contraband products primarily in urban areas). Such groups are clearly unsupportive of measures for widening the enforcement of IVA and for reducing the sales of contraband products – particularly those that are in clear violation of intellectual property and trademark laws.

Political Party Support and Opposition: Political parties are clearly the most powerful and influential actors on Paraguay’s political stage. While the Asociación Nacional Republicana (ANR) or Colorado party is clearly the largest and the most dominant and represents Duarte’s main base of support in this sector, the dominance of its support is both an opportunity and a threat. Political parties have been the vehicles to power since the late nineteenth century, a record unsurpassed in Latin America. The Colorado and Partido Liberal Radical Auténtico (PLRA) have held power, with the exception of very brief periods, since 1887,²³ with the Colorados in power roughly twice as long as the Liberals. Although a military *coup d’état* brought Alfredo Stroessner to power in 1954, he ruled through the Colorado party. And though another military *coup* ended the Stroessner regime in 1989, the Colorados are still in power. What has been consistent throughout is that holding power provides access to patrimonial resources, resources that have been adroitly used by the Colorados to assure their dominance and permanence in power.

Holding power produces a series of benefits for the Colorados that are both an incentive to compete for and remain in power and the party’s main resources for influencing the political game. Abente points out that in practical terms holding power means 4-5,000 public posts (*cargos de confianza*), approximately 20% commission on state procurement and contracts, some \$200 million in bribes from the tax and customs systems, some \$20 million dollars from Petropar, a significant sum from contracts and placement of personnel in the binational companies of Itaipú and Yacyretá, and “commissions” for protection of illegal businesses in smuggling and piracy.²⁴ Although Abente mentions only 4-5,000 government jobs, in reality most state employees (around 220,000) owe their jobs to the Colorado Party. At this point the Colorado Party is not only a powerful electoral machine but it is clearly the most influential in policy decision-making and implementation.

That said, the Colorado Party is not what is used to be in terms of power; it has lost the majority in both the Senate and the Cámara de Diputados – a far cry from the past when it was necessary to assure one third of the seats to the opposition through an official quota system. As can be seen in Political Map One, the ANR is the dominant force (note the size and density of the font identifying the ANR) in the political party sector and the largest base of support for the Duarte Frutos government. The ANR is clearly much more powerful and capable than either of its major opponents – the PLRA or Movimiento Patria Querida. The other party of significance, Partido Union Nacional de Ciudadanos Éticos (UNACE) is really a splinter from the Colorado Party representing the dissident Oviedo faction, and according to observers has begun to lose affiliates as they drift back to their origins.

Perhaps of as much concern to Duarte in terms of maintaining his support among the Colorados is or will be his ability to manage internal factionalism and restore the party to its former stature, particularly in

²² The current Ministra is said to have no political or technical experience and has failed to appoint a team with strong technical skills. The new Ministra has no experience in gender and has not completed high school. There is also a reform proposal on the table that would fold the Ministry into the Secretaría de Acción Social.

²³ The Colorados were in power from 1887 until 1904. The revolution of 1904 brought the Liberales to power that and they remained until the collapse of a “corporatist-military experiment” in 1947 returned the Colorados to power, where they have remained until the present. The Colorados have been in power for a total of 74 years while the Liberales held power for 43 years.

²⁴ See Diego Abente, “El Juego Político Paraguayo: Características y Desafíos de una Democracia de Baja Calidad”, USAID/Asunción, March, 2004.

light of the shadow of Oviedismo should the present administration begin to falter. Although it is argued by some observers that the faction loyal to Duarte is steadily absorbing the Argañistas, there is uncertainty about the Dominguez Dibb faction. Dominguez Dibb proved a potent contender in the ANR's internal primaries and despite being a relative newcomer to the party organization, his advantage in financial resources nearly won the election. Observers assert that as the next election approaches, Dominguez or someone similar will emerge.

According to some, Duarte has begun to realign the party and to give leaders from the interior of Paraguay more influence. To reinforce that point of view these observers point to the fact that for the first time there is a majority representation of diputados from the interior elected by the primary system and local Colorado Party constituents rather than appointed "seccionaleros" as in the past. Observers also point to the fact that these diputados, like Duarte, are unconnected to the "*stronista*" past within the party – in contrast to those affiliated with Argañismo, Wasmosy, Dominguez Dibb, or Oviedo.

Though Duarte Frutos now appears to have the party under control, it remains dependent on his capacity to move forward with his agenda. An issue that may prove a double-edged sword is Duarte's interest in reform/modification of the 1992 constitution to allow for re-election, which he claims is necessary to seeing through completion of his reform agenda. Though there is considerable support for reform, many view Duarte's efforts as self-promotion or worse, a not-so-veiled attempt at "continuismo".

The Colorados have always been self-sufficient with the result that bargaining and coalition have simply not been necessary to achieve policy goals – but with the loss of their majority in both the Senate and the Chamber of Deputies²⁵, it has had to become more adept at negotiation and bargaining with smaller parties and even the opposition. Given the results of the recent appointments to the Supreme Court and the evident majority now held by Colorados (or at least those beholden to the party), they appear to have learned.

There are six parties represented in the Senate and five in the Chamber of Deputies. Most are relatively new and two represent both splits from ANR and two new political party initiatives. The PLRA remains the largest party in opposition but it has grown little since the democratic transition began. Most new political parties have made gains (particularly in Congress) at the expense of the ANR, and to a much lesser extent, the Liberals. Gains by opposition parties have been most significant in the Congress where the opposition now dominates both houses. Three of these parties (PLRA, Patria Querida, and UNACE) hold a relatively significant number of seats while PEN has only one seat – in the Senate – and País Solidario has two in each chamber. Although the opposition has enough votes for a majority in each chamber, it is seldom capable of coming together in unified opposition to the Colorados. Part of the problem is the UNACE group, which is a schism from the ANR but often acts as if it is still a part of it. Fragmentation of the opposition allows the Colorados to exercise a major role in both agenda setting and in actual legislation, and importantly, to play a major support role for the President.

Pressure group and civil society actors: Pressure groups and/or civil society organizations can represent significant sources of support to the government. But it should be remembered that support has a cost – it will require significant resources or access to influence in policy decision-making to maintain that support. By that standard the major figures supporting Duarte on Political Map One (Public Employees and Teachers Unions) may be difficult to maintain over time. At the same time, there is a considerable amount of conditional support for the regime mostly in the form of local government related groups or the private sector. Consolidation of both core and conditional support rests squarely on Duarte's ability to move his agenda forward – unfortunately, however, some of the measures that need to be taken in the short-run may well alienate those groups sufficiently to cause them to move to the opposition.

²⁵ The ANR has 37 of 80 votes in the Camara and 16 of 45 in the Senate.

One of the main bastions of support for ANR (and Duarte by extension) is among state employee organizations, including public sector unions and teachers. These groups provide votes to the ANR and are important sources of funding for the party through salary deductions. It should be remembered that most, if not all state employees and teachers owe their jobs to the Colorado party – a clear reflection of the pervasiveness of patrimonialism – and as such the strength of these groups can be a double-edged sword. Although teachers' organizations are fragmented (there are seven unions that represent teachers alone) these groups can come together when their interests are directly threatened. In 2003, teachers struck for a period of two weeks in protest of cuts in retirement pay, one of Duarte's initiatives to bring about fiscal stability. Although the teachers do remain as a significant support group, it is a costly group to maintain.

There are a variety of actors in conditional support that could potentially be mobilized to further consolidate the government and its agenda, but Duarte can only provide minimum incentives and benefits to those groups. For instance, there is moderate support from business associations such as FEPRINCO, the Centro de Importadores, and UIP, mostly as a result of Duarte's interest in cleaning up corruption and squelching contraband. At the same time, however, these groups are concerned about the new fiscal package and the effect that it will have on their sectors and the economy in general – some take the recent imposition of an export tax on soybeans as a portent of things to come as Duarte struggles to deal with Paraguay's fiscal problems. On the left, both local government and the *comisiones vecinales* welcome the openings that the democratization process is providing, but again, the difficulties that the central government has in supplying necessary resources to satisfy their demands place their support in jeopardy. The *comisiones* depend on transfers of royalties but in many cases, the government is a year behind in its obligations.

There are several powerful groups in opposition; groups that not only threaten Duarte's reform agenda, but can also stall forward movement on democratization. On the right the most powerful actors are soybean growers and exporters and their associations, including APS, CAC, and CAPECO – groups whose crops the government is dependent on for improved economic growth and for export taxes. On the other side of the map, organizations such as MCNOC, ONAC, and FNC purport to represent landless *campesinos* and recent marches staged by these groups have been designed to present demands more militantly. These groups have rather different resources than those on the right side of the Map, but through their capacity to mobilize masses and their disposition to block roads and use other coercive tactics they can pose a threat to the government should its reaction fail to be handled in an adequate, non-violent fashion.²⁶

Despite the difficulties posed by legal opposition actors to Duarte and democratization, of much greater concern is the threat posed by the groups in the anti-system area of opposition – groups that refuse to play by the rules of the game. Worse perhaps is the sense of “legitimacy” of that behavior due to the impunity for narco-traffickers, *contrabandistas*, and “*industrias clandestinas*”. Some of these have acquired an almost “folkloric” status – e.g., stolen cars (or *carros mau*, as they are known in Paraguay) have been legalized through amnesty programs. *Tabacaleros* that operate largely in the black market across the

²⁶ Perhaps notable for their absence on Political Map One are a variety of CSOs that have been supported by the international community that have developed activities around a broad democracy agenda which includes such areas as human rights, anti-corruption, justice, electoral issues, women, and the like. By most accounts of those interviewed by the team, these CSOs that while active and implementing projects, appear to have little influence on Paraguayan politics or in the setting of the democratization agenda. Included on the Map were only those actors that the team found to be influential in politics and the policy-decision making process. That said, CSOs tend to emerge as more important or relevant actors as one begins to focus on issues such as justice, women's rights, anti-corruption and others. At the more macro-level however, they exercise much less influence.

border with Brazil have acquired significant influence within some of the political parties. These groups pose real threats to the competitiveness of the formal economy and to the security of the country. They are largely responsible for problems of money laundering that threaten the equilibrium of the financial system and for much of the corruption in the customs authorities and the justice system.²⁷ Their extralegal methods, their refusal to abide by the “rules of the game”, and their enormous financial resources diminish the likelihood of their actually facing legal sanction and more broadly inhibit the deepening of more equitable and competitive democratic practices. Without actions to bring under formal control and to reduce the resources available to the anti-system forces, they will continue to pose a major threat to both the advance of democracy in Paraguay and to the success of Duarte’s agenda.

External actors: International actors are increasingly prominent in Paraguay, in part because of the growing financial crisis leading to near-default in 2003. In particular, the IFIs including the IMF, World Bank, and the IADB, either have underway or are developing significant agreements with the government. There are also several other players of lesser significance (in terms of overall portfolio) including USAID, GTZ, and JICA. Somewhere in the middle of these two sets of actors is Taiwan. Taiwan has provided significant resources mostly through loans to the Paraguayan government. In terms of policy influence, the most significant actors are the first three mentioned. Their agreements with the government come with conditions and tend to set the tone of reform agendas. For instance, much of the haste and effort to increase tax collections under the Duarte government is a result of the need to meet fiscal deficit reduction targets imposed by the IMF. Likewise the proposed effort to turn the Ministry of Finance into a “Ministry of Excellence” is part of the World Bank’s efforts at improving the Ministry. One of the major activities in the area of anti-corruption, the quasi-public Consejo Impulsor del Sistema Nacional de Integridad (CISNI), is financed through a grant from the IDB.

Loans provided by the IFIs are not only important for stabilizing Paraguay’s finances but also for the provision of badly needed investment in crucial areas such as education, health, and justice. The IFIs are providing major loans in each of these areas.²⁸ Given the low level of resource generation and the very tiny allotment in the budget for capital investment, these loans play a vital role in making good on the government’s promises to improve services. However, these loans do come with a cost in terms of policies to be adopted. For instance, though a stand-by arrangement with the IMF to help avoid default is important for the country’s economic stability, the requirement to increase tax revenues through improved collection and modification of tax laws creates opposition to the government. Although external actors have helped in a very significant way in catalyzing and consolidating the reform agenda, the more immediate (but with long-term implications) problem for Duarte is weighing and determining when the political costs of reforms outweigh the benefits.

At the same time, Paraguay’s partners in MERCOSUR are also playing an increasingly prominent role in trade, customs, and *inter alia* tax and security policy (particularly those related to contraband and drug enforcement). Duarte may be fortunate in his timing but he has come to power when two reasonably like-minded (moderately populist) colleagues occupy the presidencies of Brazil and Argentina. What this will mean in the medium term is not exactly clear, but there will likely be some sympathy if Duarte decides to push less hard on some of the more difficult elements of the economic reform agenda. Brazil shares concern about the growing illegal trade between the two countries and there appears to be a growing cooperation between the two countries that may assist in reducing such trade and *inter alia* the accompanying corruption and tax evasion. If MERCOSUR is to become an effective organization for liberalizing trade and for improving the economic future of its partners, then it is vital that these initial

²⁷ -We only have anecdotal evidence with regard to the pervasiveness and power of these actors. Nevertheless, some estimates place the share of the informal economy as high as 70%, more than twice the size of the formal economy.

²⁸ It should be noted that some loan funds were never utilized because the government could not come up with sufficient counterpart funding.

steps in controlling contraband, illegal trade, and corruption of agencies charged with enforcing regulations against such activity be strengthened and consolidated.²⁹

Opportunities and threats: While a number of solid opportunities exist in the political environment to move the democratization agenda ahead and to begin to make inroads in addressing the problem of patrimonialism, corruption, and accountability, there are at least as many threats to disrupting progress. Duarte has placed reform-minded technocrats in key posts in his administration, he has begun a realignment of internal Colorado party politics, and he has gotten the moral and financial encouragement of the international community. However, and as has been said on more than one instance, much burden is being put on a new and far from consolidated reform effort. Some of the elements of the proposed reform agenda are already under attack. There is considerable concern that the government will be unable to implement adequate fiscal reforms and thereby cause delay in needed economic reform and handicap the administration's capacity to provide new and expanded services. Proposals to reduce patronage in the system are butting up against the need to consolidate support within the Colorado Party that allow Duarte to undertake his modest reform agenda. Moving the country into a serious process of reform over the next three and one-half years will require considerable skill at balancing interests. It seems quite clear that Mr. Duarte has considerable political skill (as can be seen in his capture of the Colorado Party machinery), the question remains if it will enough to keep multiple and very conflictive interests in balance as he attempts to move reforms forward.

III. IDENTIFYING KEY INSTITUTIONS

A. The Legal Arena

Constitutional Framework: Prior to 1989, the justice system had little relevance except as a tool of the dictator. After Stroessner's fall, Paraguay adopted a new Constitution incorporating basic rights and responsibilities associated with a modern democracy, recognizing the separation of powers, affirming the independence of the judiciary, and transferring responsibility for judicial selection from the executive to a newly-created independent Council of Magistrates (*Consejo de la Magistratura*) in an effort to de-politicize judicial appointments. The 1992 Constitution was declared the supreme law of the nation and delineated fundamental individual and group rights, including the right to life, liberty, due process, equal treatment under law, property, freedom of expression, freedom of assembly and public protest, compensation for damages caused by the State, and protection for vulnerable populations. The Supreme Court was granted ultimate authority to interpret the Constitution, as well as limited power to review the constitutionality of legislative enactments. The Council of Magistrates was formed in 1994, and a new Supreme Court was confirmed in 1995. The Supreme Court's initial action plan candidly described its main goal as establishing a state of law in Paraguay.

The 1992 Constitution remains intact, although constitutional reform is anticipated during the current administration. Among other things, President Duarte is expected to seek a constitutional amendment that would allow him to run for re-election.

Principal Legal and Judicial Sector Actors: The Supreme Court is comprised of nine magistrates and is the highest appellate authority. The Supreme Court supervises the administration of the judicial sector, selects judges for the lower courts from candidate pools proposed by the Council of Magistrates, decides constitutional challenges to legislation, and can impose disciplinary sanctions (other than termination) on

²⁹ Some observers argue that because it is unable to compete with Brazil and Argentina on a level playing field, Paraguay will lose with MERCOSUR and would be better off with other trade agreements.

lower court judges for unethical conduct. The Office of the Public Defender is under the jurisdiction and financing of the Supreme Court. Beneath the Supreme Court are appellate courts, first instance courts, and justices of the peace. There are approximately 800 judges of all levels in the country. Members of the Supreme Court are confirmed by the senate subject to executive approval, and are chosen from candidate pools designated by the Council of Magistrates.

The Council of Magistrates reviews applications for judicial and prosecutorial positions, and selects pools of three candidates to fill each vacancy; the Council's proposals are submitted to the Supreme Court for decision. The Council consists of representatives from the Supreme Court, executive branch, parliament, law schools, and lawyers. The Magistrate Tribunal (*Jurado de Enjuiciamiento de Magistrados*) is created by the Constitution and has the sole authority to remove judges; the only grounds for judicial removal are professional misconduct or criminal activity. The Magistrate Tribunal consists of representatives from the Supreme Court, Council, and parliament.

The Public Ministry, headed by the Attorney General (*Fiscal General*), is an independent autonomous entity charged with criminal prosecution and certain limited civil functions on behalf of the State. A Solicitor General (*Procurador General*) is chosen by the President and is primarily responsible for protecting, defending, and asserting "patrimonial" interests of the State, such as tax collection and other State claims to property or assets. The Minister of Justice and Labor, also under the executive, administers the prison system. A *Tribunal de Cuentas* and the *Contraloría de la República* have limited jurisdiction and resources to investigate and pursue violations of administrative law and procedure.

An estimated 12,000 lawyers are admitted to practice in Paraguay. Membership in the Bar Association (*Colegio de Abogados*) is not mandatory, and it is generally considered a weak organization with little political unity or strength. Most judges belong to the Magistrates' Association (*Asociación de Magistrados*), which likewise has not developed strength or political stature as a professional association.

Substantive and Procedural Laws and Reforms: Criminal – Paraguay traditionally functioned under a written inquisitorial system of criminal law that permitted unconscionable delays, secrecy, abuse, illegal detentions, corruption, and inefficiency. The country had one of the highest rates of pre-trial detention in Latin America: 90-95% of defendants were in jail without ever having been tried, convicted, or sentenced. With the assistance of USAID and other international donors, Paraguay developed and adopted a new Criminal Code (1998) and Criminal Procedures Code (2000) that establish an adversarial system mixing attributes of civil and common law systems, and incorporate provisions for the protection of individual rights, due process, freedom from arbitrary or lengthy detentions, open and oral trial proceedings, processing deadlines, increased prosecutorial roles, and judges who serve as impartial decision-makers rather than investigators. The new laws also provide for alternative case dispositions such as plea-bargaining and restitution. The percentage of pre-trial detentions has now reportedly dropped to approximately 70%.³⁰

Civil – substantive civil laws were not identified as a major obstacle to enforcement of rights. Overall weakness and pervasive corruption of the justice system, however, has resulted in lack of enforcement and impunity. The main problem in the civil arena was broadly referenced as a "lack of judicial security." The consensus that emerged was the primary need to enforce, rather than revise, substantive civil laws.³¹

³⁰ Serious problems with the criminal justice system remain. See, "Perceptions of Impunity, Corruption, and Limited Access to Justice", *infra*.

³¹ Reformation of civil procedural codes, however, could increase efficiency, transparency, and reduce corruption. Civil courts continue to operate under a closed written system. A reform project to adopt a more open civil system incorporating oral processes, based on a Uruguayan model, is in its early stages.

Underlying Problems of Independence, Professional Standards, and Accountability:

Despite constitutional guarantees, the judicial branch in Paraguay is not independent. The government was described as a “tripod with only two legs.” Although the extent to which the judiciary had ever asserted or achieved any real independence in the past is debatable, actions of the current administration have dramatically changed the composition and course of the judiciary, and have effectively blocked routes for development of judicial independence in the foreseeable future.

The 1995 Supreme Court was generally respected and regarded as the first court to assert a modest degree of independence from the executive. For the first time, the Court decided it could declare laws and executive decrees unconstitutional, and occasionally did so. From 1995 until approximately 2001, the Court issued a number of decisions that had significant political and institutional impact, entered several rulings against the State, and began tentative inroads into independence. The most important case came in 1998, when the Court held that President Cubas had acted unconstitutionally in pardoning and releasing Colorado Party populist leader General Lino Oviedo from prison, and ordered that he be returned to jail. The president refused to obey the judicial order, and the Supreme Court refused to back down. The resulting standoff pitted the executive against the judicial branch for the first time and contributed to the political and social unrest that culminated in the 1999 assassination of Vice President Argaña, massive protests against the government, impeachment of the president, and the flight of the president and General Oviedo into exile. Several other case decisions during this period were reportedly divisive, but accepted. Although the Court did not have high levels of public confidence, neither was it perceived as thoroughly corrupt.

The composition of the Supreme Court changed in 2001 with the resignation and replacement of several members of the bench. Thereafter, the reputation of the Court quickly deteriorated with the revelation of blatantly corrupt and unethical practices of several justices and rulings that were perceived as motivated by self-interest. For example, the Council interpreted the constitutional provision defining the term of office for Supreme Court justices to grant life tenure as of the time of appointment, rather than requiring confirmation after an initial 5-year term. No corrective actions were taken against corrupt behavior within the judiciary. Public confidence in the judiciary deteriorated to its lowest point. All persons interviewed agreed that, by 2003, the Supreme Court was viewed by the public with contempt and considered a disaster. The Court was perceived variously as operating above the law, manipulated by political interests and actors, and manipulative of lower court judges and decisions. Judges were often subjected to external and internal pressures when ruling on cases with politically influential parties involved. Not all members of the Court were considered corrupt and abusive of authority, but the institutional reputation of the Court and judiciary had become irrevocably tainted.

When President Duarte took office in August 2003, he declared his intention to “pulverize the judicial branch.” By that time, the judiciary had almost no public support because of scandals and pervasive allegations of corruption. President Duarte announced his intention to replace six of the nine Supreme Court justices; political negotiations ensued to identify which justices would be replaced. Once the replacement subjects were identified, they were pressured to resign or face impeachment. Ultimately, two were impeached and four resigned, leaving the Court essentially nonfunctional with only three sitting justices. Although the purported basis for this drastic action was to clean up the court, it was widely reported that a mixture of good and bad justices had both been terminated, and had remained, on the Court. Political power and influence determined which justices would be forced from office. Two of the terminated justices have initiated proceedings before the InterAmerican Commission on Human Rights.

The executive and parliament recently agreed that the new Court would be politically apportioned to mirror congressional party composition, and negotiated the replacements to fill the Supreme Court vacancies. The President reportedly exercised the principal role in selecting the new justices. The Council

of Magistrates was seen as a conduit for the ongoing political negotiations and substantive decision-making, rather than the leader. Importantly, a network of civil society organizations came together to press for information, involvement, and input into this process. This was the first time that civil society had played any role in judicial selection.

As a condition of their nomination, each of the new justices agreed in advance not to interpret the Constitution to permit lifetime tenure upon appointment, and to subject their positions to confirmation in five years. Because this wholesale replacement was accomplished just months after the presidential inauguration, and the presidential term is five years, in practice this could mean that each new president will have the power to appoint a majority of the Supreme Court. Additional rumors are circulating that President Duarte has a prospective “termination list” for specific lower court judges, and that he will demand blanket re-submission of lower court judges to approval and confirmation by the Council, regardless of the status of their tenure. President Duarte has also provided a list of case priorities to the Supreme Court, has indicated and publicly commented upon desired outcomes, and has cautioned the judicial branch against rulings unfavorable to the State. The President has pledged to maintain a close watch over the courts and promised that they will strongly feel his presence. Significant continuing control by the executive should be presumed.

The consensus was that several of the new Supreme Court justices are capable and well-qualified, but that the purging and replacement process was entirely politically motivated and controlled by the President to obtain a further subjugated Court that will not erect constitutional roadblocks to his anticipated bid for re-election, or resist the weight of political interests and authority. Although couched as a judicial reform, this process only substituted new justices for old, and did not alter the institutional environment that permitted corruption and other abuses of authority without penalty. All hopes for institutional development necessarily rest on the individual strength and personalities of the new justices, their desire and ability to improve judicial performance at all levels, and their resistance to outside pressure and corrupt influences.

These sweeping changes have confirmed the weakness and subservience of the judiciary, highlighted its lack of both horizontal and vertical independence, and reinforced public perception that the judicial branch is a tool for the wealthy and political elite. Courts in Paraguay, as everywhere, are political as well as judicial entities, but there has always been a mix of good and bad judges who have exercised varying degrees of independence. The negotiated political apportionment of the current bench raises the specter of explicit political allegiance in future decision-making. The concern now is that party allegiance stemming from judicial appointments and proportionate representation in the courts will determine case outcomes.

In other words, the overriding concern is not so much the Supreme Court’s current political composition, as how much its future is politically compromised. As elsewhere in Latin America, the public has largely supported the President’s actions towards the judiciary framed as part of an aggressive anti-corruption campaign. Although much of the legal and judicial community expresses worry over this frontal assault on judicial independence and what it portends for the future, the President has encountered no unified or effective opposition; the overall response has been to “wait and see” how it all turns out.

A critical lack of professional and ethical standards, transparency, and accountability mechanisms has contributed substantially to the failures and deficiencies of the Paraguayan justice sector that have led to the present “crisis of confidence.” The Council of Magistrates and the Magistrate Tribunal are charged with responsibilities for selection and termination of judges, but operate without established criteria, uniform standards or transparency, and are considered highly politicized. Likewise, the Supreme Court is authorized to take disciplinary and corrective measures against lower court judges and attorneys, but operates on an *ad hoc* basis in closed proceedings that are viewed as inefficient and ineffectual. Neither the legal nor the judicial community has undertaken any serious measures to professionalize or effectively

self-police their own ranks, and has demonstrated little interest in or commitment to doing so. If independence is not paired with accountability, it will be difficult to avoid unchecked abuse of authority, be sustainable, earn equal status with other government branches, or obtain credibility and public confidence. The justice sector in Paraguay has been insulated and shielded from outside scrutiny, as well as effective professional and ethical regulation, monitoring, and discipline from within. Genuine and substantial gains in these areas are a prerequisite to shore the foundations of this sector generally, and to provide a basis for achieving future independence.

Perceptions of Impunity, Corruption, and Limited Access to Justice: The public has the least confidence in the judiciary and considers it the most corrupt public institution. Impunity is seen as the rule for the wealthy and politically powerful, while the majority of the population is unprotected by the justice system and punished disproportionately for legal infractions. *El que roba un poquito, se va al Panchito López, y él que roba muchito, se va al Palacio de López.*³² Confidence in the rule of law cannot be expected where the system as a whole is considered unfair and unjust.

The Paraguayan criminal justice system suffers from inherent inequalities and power imbalances. The new criminal laws and oral trial procedures are clearly a major step forward for the justice sector, but the new system is still developing and plagued with problems. The Public Defender's Office, which is responsible for representing the vast majority of persons accused of crimes, requires strengthening, training, independence, and other crucial support to enable its attorneys to adequately represent this large population. An adversarial system requires a balance between prosecution and defense if it is to succeed. As it stands, there is a serious and widely recognized imbalance between the prosecution and public defense, in terms of both quality and quantity.³³ We were told that cases often end in conviction not because of the skill of prosecution, but because of the inadequacy of the defense presented, even when the prosecution commits errors that arguably violate the defendant's rights.

The Public Ministry also has its share of serious problems, relating largely to lack of prosecutorial capacity, inadequate technical assistance, corruption, and political interference with prosecutorial functions. Prosecutors often receive their appointments through personal connections, rather than merit selection, and resist performance evaluations. These problems are especially acute outside the capital, where prosecutors were often reported to be corrupt, inept, and politically controlled. In rural areas, corruption more often results from nepotism or favoritism, as opposed to bribery. A law creating an Internal Affairs unit (*Inspección*) to monitor and oversee the Public Ministry was passed, but its responsibilities and authority are still undefined, so it is not yet functional. Defects in the investigative stages and development of evidence were also identified as a primary obstacle to successful prosecutions, particularly in cases involving the *Contraloría de la República*, although this has been improving. Serious corruption allegations have been made against the Attorney General currently heading the Public Ministry and President Duarte is expected to force his resignation or impeachment in the near future. As with the Supreme Court, however, substitution of the principal will not of itself effect needed institutional reforms.

Justice comes at a price that most people cannot afford, and relies largely upon personal relationships, friends, and connections. Most people do not have the resources or political connections necessary to navigate the system. Few organizations offer legal services at reduced rates or representation *pro bono*, although some NGO's provide limited services in targeted subject areas. Clinical law school programs are almost nonexistent. Infrastructure and institutional capacity are insufficient to implement new laws

³² The man who robs a small amount goes to Panchito López (former juvenile detention center infamous for poor conditions), but the man who robs a lot goes to the Palacio de López (the presidential palace).

³³ There are 180 public defenders in the country; the Public Ministry has a budget for 264 prosecutors, although only 244 have been appointed. Public defender salaries are in the range of USD\$800-900/month; prosecutors earn approximately USD\$1,100/month.

covering domestic violence, children, and family matters. The Office of the Ombudsman could be an important resource to channel and resolve issues between the State and its citizenry, but it is completely politicized, has little expertise or credibility, and is essentially nonfunctional. Public defender services do not match the prosecution or meet needs, and we were told that criminal defendants have been known to be abandoned by their private attorneys without notice to them, and languish in jail as “forgotten prisoners” unaware that they are no longer being represented. Poor defendants are viewed as flight risks because of their impoverished living conditions, and are therefore kept in jail rather than released conditionally, thus beginning a cycle of “criminalization of poverty” and affirming the perception that law punishes the poor.

Limited access to justice feeds the larger overlying issue of impunity; in essence, poor people cannot obtain the “*access to impunity*” enjoyed by the wealthy and powerful. Access to justice is even more restricted in rural areas, and is limited by factors such as distance, lack of infrastructure, transportation, language, etc. New courthouses are being constructed in outlying judicial districts, but they appear to be underutilized. Low average caseloads indicate that much of the judicial branch appears to be underworked. Paraguayans are not accustomed to seeking recourse through the courts, and often bring legal problems to their local church or public authorities for assistance in resolution. Justices of the Peace have been placed in all or most municipalities³⁴ and have offices with at least two staff in addition to a judge, sometimes in combination with a public registry. They can exercise jurisdiction over small civil matters. Similarly, however, the Justices of the Peace appear to be underutilized and many have very little work.

Poor Judicial Administration and Capacity: The Court reflects a closed system that favors cronyism, nepotism, and inefficiency, discourages judicial development, and reduces public confidence. Corruption was reported, especially in lower-level functionaries. Court personnel often secure their positions based solely on family ties or connections, instead of merit-based selection or periodic performance evaluation. The Supreme Court does not have a competent centralized administration office. “Judge shopping” is routine in civil matters because judges are assigned to cases in rotations (*turnos*), and litigants can simply delay filing until a favorable judge is on rotation. A new system of random judicial assignments applies to criminal cases, reducing the ability to “judge shop.”

The lack of separation of judicial and administrative functions was also identified as a serious efficiency problem. Three of the nine justices on the Supreme Court are designated to constitute a Management Council (*Consejo de Superintendencia*) and are responsible for the everyday administration of the courts. These judges are overburdened with administrative tasks, but are also expected to carry a full caseload.

Much of the Supreme Court President’s time is spent addressing public procurement and budgetary issues. This wastes time and opens corruption opportunities. The procurement and budgetary processes have led to enormous abuses and money wasted due to nepotism, overpayments, and corruption. The Supreme Court is currently undergoing changes to its procurement mechanisms and practices. Operational funding to the judicial branch has been conflictive, unpredictable, and problematic.³⁵

³⁴ There are approximately 260 Justices of the Peace throughout the country, 98% of whom are lawyers.

³⁵ The Constitution requires that 3% of the national budget be devoted annually to fund the judicial branch, but problems have arisen in the interpretation and enforcement of this constitutional mandate. The Supreme Court contends that the 3% should be budgeted solely for courts under its jurisdiction and authority. The executive branch argues that the 3% should be shared between the Supreme Court, the Public Ministry, the Council of Magistrates, and the Electoral Justice system. Although the budgetary allotments in the past few years have sometimes exceeded 3%, the total amount has been split between all four entities, and the judiciary has received allocations of less than 3%. In 2004, the approved budgetary allocation to the justice sector totals 4.86% of the national budget, but is shared between the Supreme Court (2.6%), Electoral Justice (1.4%), the Public Ministry (.68%), and the Council of

B. Competitive Arenas

1. Electoral Competition: Electoral competition has significantly advanced since the fall of Stroessner. Judged relatively free and fair since 1993 by international observers, Paraguay's elections have been getting better in terms of both administration and participation, and are seen within and outside Paraguay to have played a beneficial role in the democratization process. From a historical perspective, this is no small achievement. Under Stroessner, there was no competition for power. Elections were tightly controlled. Stroessner and the Colorado Party waged active campaigns, but outcomes were never in doubt: he and his candidates always won by large margins. Electoral laws precluded an opposition win; indeed the outcome was pre-arranged with loyal 'opponents'. As with other hegemonic party systems (see below for definition), there was no possibility of alternation; the Colorado party retained power whether or not it had support and the Liberal party was entitled to a permanent minority (one-third) representation in the legislature regardless of the votes it obtained.

A 1991 electoral law combined with the 1992 constitution paved the way for electoral reform that helped to move Paraguay from what had been for decades a system guaranteeing Colorado control to a system that permits alternation. This change was evident in the 1993 elections. Although administratively flawed, the process produced a congress in which the Colorado Party no longer held a majority. Combined with a split in the Colorado party the shift in legislative power prompted the creation of the TSJE, an autonomous entity under the judicial branch, which initiated a new period of electoral transparency. The TSJE is a major achievement of the Paraguayan process. It has succeeded in administering two general (1998, 2003) one vice presidential (2000) and two municipal elections (1996, 2001), all of which were judged free and fair. It has also adjudicated four post-election challenges since its inception.

Between election cycles, the TSJE plays a mediator-for-hire role in non-election venues, including labor and sports association disputes. While these new demands for the Tribunal's arbitration services reflect a well-deserved reputation for impartiality and technical expertise, they also demonstrate the TSJE is underutilized between elections. It could play a stronger role in the auditing of political party financing in the periods leading up to the electoral campaigns, thereby attacking what is arguably the Achilles heel of electoral competition in Paraguay.³⁶

Since the mid-1990s, Paraguay's electoral process has made additional strides toward international standards for fairness and transparency. The 1996 municipal elections were the first to be subject to the adjudication of the Tribunal; the 1998 general elections were the first to use the electoral registry, which enabled 85% of eligible voters to participate. The 2003 elections are viewed as the high water mark in both legitimacy and transparency. Half the Paraguayan electorate voted by electronic voting machines, reducing irregularities to negligible levels compared with earlier elections and with countries at similar stages of democratization.³⁷

Separating municipal from general elections also had beneficial effects. The process reinforced the division of the local and national political issues and has worked as a kind of mid-term referendum on parties in government, helping parties maneuver in swing areas to build support for the national

Magistrates (.18%). More significantly, the amounts actually disbursed have often been far less than the approved allotments, and the courts have therefore operated at varying and unpredictable levels of funding.

³⁶ Interview with Alberto Ramirez Zambonini, *Tribunal Superior de Justicia Electoral*, March 2004.

³⁷ Interview with Ramirez Zambonini, *TSJE*, March 2004.

elections.³⁸ One imperfect indicator of election success thus far is voter turnout. The mass dissatisfaction with how democratic Paraguay has been governed over the last decade has not dampened participation rates, which are high compared to other countries in the region, around 65%-70% of eligible voters since 1993. Although the Paraguayan vote is compulsory, there are no real penalties for non-voting and likely has no effect on turnout.

Many factors continue to undermine electoral competition. One is an electoral system that uses a simple majority to elect executive positions and a proportional representation (PR) formula to allocate seats in the legislature. Candidates are selected from closed lists in internal and municipal/national elections, reducing transparency in both. The closed party list potentially shields allegedly corrupt candidates seeking immunity from the public eye. Campaign finance suffers from a similar lack of transparency. Some traditional party campaigns in internal and general elections are allegedly bankrolled by illicit businesses and state run institutions, hence the recent third party advocacy of finance and disclosure laws.³⁹ The TSJE does monitor campaign contributions and expenditure, but despite its administrative success it lacks the capacity to engage on the thorny issue of party finance. Vote buying, like the broader corruption phenomenon, is difficult to measure, but there is no question that vote buying by candidates and *seccionales* is seen as a widespread, pernicious practice.⁴⁰

The use of the closed list, opaque party financing, and vote buying, among other factors, may explain the paradox that public opinion about democratization has soured even as the electoral process has strengthened. On the one hand, the electoral process is viewed as free and fair, and the TSJE is seen as an impartial administrator, a fact reflected in a variety of confidence surveys. On the other hand, elected officials and legislatures continue to be held in the lowest regard and viewed mostly as tainted by corrupt practices. Locally elected authorities do tend to fare better in terms of public perception, but not by much. One of the main reasons behind this apparent paradox is the perception of political parties themselves. Paraguay is not alone among transitional countries in the low esteem for political parties. Transparency International's latest global survey indicates that a large plurality in most of the world's developing and developed countries view political parties as primary sources of corruption.

2. Party Competition: With two century-old traditional parties with strong grass-roots organizations and party discipline and stable partisan identities, Paraguay's party system could hardly be called weak.⁴¹ But it has only recently become competitive. Since the 1993 elections, competition among traditional political parties has unmistakably increased, as has the challenge from third parties. Internal party elections, meanwhile, have had adverse but on balance positive effects on competition.

Increasing competition can be seen by the shift from a hegemonic party system under Stroessner to a more conventional bi-party system with a small but significant third party niche. In the hegemonic system, other political parties are permitted and can participate in general elections, but one party is strongly predominant. The Colorado party was hegemonic under Stroessner, controlling the state apparatus as well as access to patronage. Opposition parties were required to be authorized by state (Colorado party) authorities, were accorded second-class status and effectively prevented from competing with the Colorado party in any antagonistic way.

Since 1989, however, competition both within and among parties has re-emerged because of national and local level as well as internal party elections. With anywhere between 40 and 50 percent of the electorate, the Colorado party is still the dominant party in Paraguay. But opposition parties have begun to win

³⁸ Interview with Carlos Filizzola, Senator, Partido Pais Solidario. March 2004.

³⁹ Interviews with Gustavo Laterza and Rafael Filizzola, Deputy, Chamber of Deputies, March 2004.

⁴⁰ CIRD/USAID (2003) survey responses to questions 67 and 68.

⁴¹ For a detailed history of the development of Paraguay's party system, see Abente Brun (2004)

important national and local elected offices since 1991. Patronage is therefore no longer the exclusive domain of the Colorado machinery. Rather, as the system has become more of a two party system, Liberals vie with Colorados for state patronage, and have seized key posts within the central government since the mid 1990s, the Contraloría among them. Liberals have also wrested local governments from Colorado control, sharing the spoils in the interior of the country as well. In the major municipalities, like Asunción, Liberals packed *cargos de confianza* and other public sector jobs with loyalists, helping to consolidate the Liberal party as a main minority party.

Factionalism within the traditional parties is a second sign of increasing competition. Nurtured in large measure by internal party elections, intra-party factions have had both positive and negative effects on party organization. Internal elections particularly in the Colorado party disrupted the party's historical cohesion and created polarization within the party. The internal elections in 1993 prompted the Wasmosy/Argana split in 1992. While this split paved the way for opposition control of the legislature between 1993 and 1998, it also produced a rift between Oviedo and the rest of the party that erupted into open intra-party violence. The Oviedista defection to UNACE meant the loss of Colorado party control over the vice presidency in 2000, generally thought to be a positive change. Even the Colorado internal elections of 2002 were closely contested, as Duarte Frutos barely beat out Osvaldo Domínguez Dibb (44% to 40%). Opinions about the unity of the current Colorado party are mixed,⁴² but there is little doubt that the party's future cohesion depends on Duarte's performance.

While internal elections have sown disunity; they have also eroded the oligarchic traditional party leadership, which has implications for regional interest representation. Whereas the vertical chain of command from Asunción to the regional *seccionales* was the *modus operandi* for decades, regional or minority interests within traditional parties now have opportunities to garner positions on the electoral lists and win seats in legislative chambers. And they have done so. Nowhere is this more evident than in the Colorado party, which seems to have begun to restructure its leadership to reflect new regional and minority interests; both the President and the Party's titular head hail from the interior of the country, and the current crop of Colorado deputies represent a wider swath of the country in regional terms than the parliaments of the 1990s.⁴³

A third indicator is the rise of alternatives to the bi-party duopoly. The electoral potential and influence of the parties that occupy this third space has yet to rival that of traditional parties, which still claim three-fourths of the electorate. Still, the constituency of support for third parties has proved resilient even if the parties have not. *Partido Encuentro Nacional* (PEN), for example, captured a fourth of the vote in the 1993 elections, making it the third largest political force in the 1990s. It later allied itself with the Liberal Party in the 1998 elections and its leadership promptly disintegrated, as did its base of support, relegating the party to electoral insignificance. The floating, independent base of support for alternative parties persisted, however. In the 2003 election, third parties accounted for one fourth and one third of the vote in the Chamber of Deputies and Senate respectively, and around one fifth of the presidential vote.

The preeminent third party actor is *Movimiento Patria Querida* (MPQ), a party with strong private sector support. MPQ captured 15% of the vote and 17 seats in the Congress (10 deputies, 7 senators) in the 2003 election. It could remain a potent force in Paraguayan politics and perhaps grow stronger if certain electoral reforms are enacted. The much-discussed ballotage system, for example, which permits a second round for presidential elections in which a candidate must achieve a 50 percent plus one vote majority to prevail, could help third parties like MPQ. In that scenario, the MPQ could edge out a Liberal candidate

⁴² Abente Brun (2004) sees Duarte as having achieved unprecedented party cohesion after his election in April 2003. Gustavo Laterza and others cite the lurking presence and continuing popularity of Oviedo as a factor that undermines party unity, with the potential to cause a more general disruption.

⁴³ Interview with Herminio Cáceres, President of the ANR (Colorado Party), March 2004.

in the first round and then ally with the Liberals to compete against a Colorado candidate. Such a possibility seems optimistic in the current context, but prominent politicians including the President have expressed support for such reforms. The social democratic *Partido Pais Solidario* managed to capture a minor but large enough share of the vote in the parliamentary elections to garner congressional representation (2 deputies, 2 senators).

Whether these new forces mimic the patterns and vices of the traditional parties or create a new paradigm for party organization and representation remains to be seen; they have created an alternative discourse that resonates with a small, significant part of the electorate. They have also taken on an importance disproportionate to their base of support, because the Colorado party no longer holds a parliamentary majority. In summary, party competition has been improved by general elections and by internal elections, though this latter change has fragmented party unity. The entrance of new parties in the “third space” has not dented the Liberal-Colorado duopoly, but it does seem to be an enduring presence within the emerging party system.

3. Competition among Branches of Government: While inter-governmental constraints did not exist under the Stroessner regime, which concentrated all political power in the executive branch, the current constitution does establish a separation and independence of powers, which is at least partially respected. Although the 1992 constitution created a presidential political system, it gave the legislature powers that under Stroessner belonged exclusively to the executive – such as military re-organization authority. It also attenuated the presidential veto by giving the parliament the authority to override the veto. Importantly, the constitution gave the legislature strong oversight functions, including the right to investigate and audit all “public issues” as well as the authority to impeach the highest-ranking executive and judicial branch officials for corruption or dereliction of official duties.

The legislature participates in the appointment of magistrates and Supreme Court Justices. With the agreement of the President, the Senate designates members of the Supreme Court through the presentation of a list of potential candidates (*terna*) presented by the *Consejo de la Magistratura*, two of whose eight members are also named by Parliament. Four members of Congress sit on the *Jurado de Enjuiciamiento*, charged with disciplining and removing incompetent or corrupt judges. The Chamber of Deputies, for its part, maintains the power to intercede in local governments in the removal of mayors or departmental governors. Finally, the Parliament has the right to approve or reject a declaration of a state of exception by the executive.

In summary, the parliament does have strong oversight authority over the executive and judicial branches. The legislature has begun to assert its prerogatives to oversee the executive over the last decade but it has had little if any impact on enforcing horizontal accountability through the investigation and discipline of corrupt or incompetent officials within other branches of government. Judicial independence, meanwhile, exists only on paper. As several prominent Paraguayan legislators have pointed out, however, the concept of “fiscalización” (oversight) is still quite nascent in Paraguay, with the result that the legislature tends to be myopically focused on its law-making function, giving oversight and representation short shrift. Thus far, legislators have done very little to hold corrupt executive and judicial branch officials to account for corrupt practices and ensure that laws are actually and adequately enforced. There have been some notable examples of the legislature asserting its oversight function, such as the attempt in 2003 to impeach President Gonzalez Macchi on corruption and incompetence charges. However, the oversight ability of the legislature remains poorly developed.

For its part, the judiciary is dominated by the executive branch, and therefore has yet to play an important role as a check against executive power. Sporadic flashes of independence in the 1990s included the Supreme Court December 1998 decision to sentence Lino Oviedo to a 10-year prison sentence for his attempted coup. Most analysts argue, however, that judicial independence has actually deteriorated in

recent years, and that the judiciary has been notably subordinate to the executive branch in the selection of judges.

4. Competition of Ideas, Pluralism, and Media: With no formal barriers to association, autonomous organizations have sprung up and multiplied in post-authoritarian Paraguay, contributing to a much broader competition of ideas and interests in civil society that was not permitted under the dictatorship. Only fourteen years into its transition civil society is still weak in Paraguay, especially compared to the more vibrant, better-organized societies of neighboring countries like Brazil, Argentina, or Bolivia. Yet the increase in the number and diversity of pressure groups since the early 1990s has helped to broaden the political debate, and that wider debate is reflected in a variety of forms: the small-scale *comisiones vecinales* that have proliferated in nearly every municipality in the country; the large, recent *campesino* protests and marches in Asunción sponsored by the *Mesa Coordinadora Nacional de Organizaciones Campesinas* (MCNOC), a very powerful organization of rural agricultural workers; the regular strikes and threats of actions by public and private sector unions (CSFP) such as sanitation workers and bus drivers; the lobbying of the legislature and executive by large agro-exporting groups, like CAPECO; and the influence of NGOs and think tanks with international support and funding.

The influence of new civil society actors on the pluralism of ideas is evident in the commercial media sector. Media was firmly under state control and subject to direct censorship for decades under Stroessner. With a few exceptions in the early 1990s, media in Paraguay have been allowed to operate, broadcast and publish without significant government interference. However, most of these media sources are closely intertwined with business and political groups whose interests and opinions and, in some cases, political aspirations, exert a strong influence over editorial content and even news reporting, so it is hard to describe them as fully independent.⁴⁴ The clearest example of this linkage is the ownership of *La Nación* by Osvaldo Domínguez Dibb, the country's large tobacco distributor and presidential candidate against Duarte Frutos in the Colorado primary, though there are numerous other examples.⁴⁵

There is still a sometime hostile environment in Paraguay for media, as evidenced by the proliferation of libel and slander lawsuits against print and broadcast media mostly by public officials. While these actions appear not to have had a restraining or chilling effect on the freedom of expression, it is clear that media have had to divert valuable resources to fight these often-spurious claims.

C. Arenas of Governance

1. Legislative Sphere: The Constitution of 1992 significantly increased the powers of the bi-cameral Congress⁴⁶ in relation to the President (some argue disproportionately⁴⁷). For instance, the congress now can overturn a presidential veto with a simple (i.e., 50% +1 vote) majority⁴⁸; the congress may change the estimated income levels for the budget as it sometimes does in order to increase the capital budget (the only area that it is permitted to raise) regardless of whether that estimate could be feasibly collected or not;⁴⁹ the Senate designates the supreme court justices with the approval of the executive (the reverse is usually the case); and, the congress is required to re-approve that part of a bill not vetoed by the President – if not, the whole bill dies. Although there clearly has been some improved balancing of powers between

⁴⁴ Interview with Antonio Carmona, *Ultima Hora*, who exempted his newspaper from this characterization.

⁴⁵ Abente Brun (2004), pp. 39-40.

⁴⁶ For a detailed discussion of the increase in legislative powers see, Joan Prats, *et al*, “Libro Blanco sobre la Reforma Institucional en Paraguay”, UNDP, February, 2003. pp. 13-15.

⁴⁷ See Diego Abente, *op.cit.*, p. 9.

⁴⁸ *Ibid.*

⁴⁹ Abente argues here that this power has contributed to Paraguay's serious budget deficit problems of the last few years.

the two branches, the Congress remains the lesser actor. But that said, it should be borne in mind that the current democratic iteration of the Congress is rather new – and compared to other Latin American republics, it has made remarkable progress in a relatively short period.

The legislature appears to have become more representative and appears to be better performing its representational function. Two elements have contributed: first, proportional representation has permitted multiple parties to be represented in the Congress in what has otherwise been a historically two-party dominant system. Multiple parties existed before proportional representation came in 1992. Now, five parties are represented in the *Cámara de Diputados*, while in the Senate there are six. Although this configuration sometimes makes for difficulty in negotiating legislation through both houses, more voices are being heard. Second, internal primaries at the departmental level for the selection of party lists for *Cámara de Diputados* has apparently brought the deputies closer to their constituencies. The primaries at least give the local electorate the opportunity to vote out those representatives who do not respond to constituent demands.

While representation has increased modestly in the *Cámara*, it is hindered by the lack of resources available to deputies to solve constituency problems – which frequently translates to public works. In the United States, so-called pork barrel money is used to address demands of constituents and is considered a vital part of the congressman's resources. Likewise, in Costa Rica, *partidas específicas* are used to a similar effect, e.g., for building bridges, paving streets, providing street lighting, and, like the United States, have come to play an important role in *diputado*-constituent relations. In Paraguay, the deputies have little or no access to such resources. At this point they have the mechanism in place for better representation, but few means exist to help fulfill the role.

Other elements or factors detract from Congress' legislative and representational roles. Several observers, including members of the Congress, argued that legislators' skills need more development, that in general the capacity of deputies and Senators is low. In the Senate, which is the "*Cámara Revisora*", the budget commission has no serious expertise that it can use on the committee to lead a serious analysis and review of the proposed budget. On other committees, observers point to problems of absenteeism from committee meetings and duties and the lack of technical skills.⁵⁰ Indeed, the problem is such that according to one deputy, most of the *Cámara's* committees are little more than "*comisiones de aplausos*".

While the problem of resources is identified as a main cause of the lack of technical staff to competently review legislation, considerable outside expertise, through local think tanks, NGOs, or the universities, could be drawn upon by the *Cámara* or the *Senado* at no or very little cost.⁵¹ The encouragement of open hearings (which are provided for in the Congress' operating rules) could also bring a wider variety of opinion and analysis, which would at the very least expose the Congress to other perspectives and analytic points on legislation – something that now rarely happens. Also impeding the Congress' capacity to fulfill a more significant role are the problems of, as one deputy put it, "learning to negotiate and honor agreements made" not only within the *Cámara de Diputados*, but also between the two legislative bodies.

⁵⁰ In the area of technical expertise, it appears that some CSOs, particularly in the environmental area, have offered such skills to commissions to review legislation. Similarly, some CSOs offered their expertise to assist with the screening process for candidates to the Supreme Court.

⁵¹ This is a very commonly employed practice in the United States Congress as well as in the State Legislatures. Lobbyists frequently assist Congressmen in developing their technical and substantive arguments for legislative projects, supplying them with reinforcing data as well as witnesses who can speak technically and articulately to a project's merits. Opposition to proposed bills utilizes exactly the same mechanisms to support their own arguments. Some lobbying groups have been very successful in assisting some legislators in becoming relatively sophisticated "experts" in certain areas. While this tactic certainly carries the risk of the legislator falling into the pocket of, or creating an unhealthy dependence on, certain interests or lobbyists, it generally improves the quality of supporting and opposition arguments in the Committees and on the floor of the legislature.

Although the role of Congress as a competitor with the Executive is increasing (albeit modestly), some factors continue to obstruct that role. For instance, the closed list system for Senate candidates in the election maintains the role of the party *caudillos* and diminishes that of the Senators themselves – making them responsible or accountable to the party rather than the voters. Since the parties tend to be controlled by those loyal to the President, the “checks and balance” that can be exerted by the Senate is rather limited.

Another aspect limiting the Congress’ role is the fact it cannot compete on questions of service provision – service delivery is clearly the prerogative of the Executive. Legislatures in some other countries at least ameliorate this through the authorization of budget lines to solve problems in local constituencies – through “pork” and the like. While frequently considered pejoratively, “pork” can fulfill a vital function in closing the circle of representation – it is important that the legislator occasionally deliver goods or services so that constituents can more closely see if, how, and how much their legislator is capable of fulfilling the representation function. Having something to deliver will help the legislature grow as a competitor to the Executive.

2. Administrative/Executive Sphere: Though some steps have been taken to achieve the beginnings of a system of checks and balances with the Legislature, Paraguay remains an eminently presidential system. In many ways it can be argued that it is mostly a more democratized extension of the past’s authoritarian presidency. In the past, as in the present, the President relied and relies on patronage to manage support relations and to reward the faithful. The patrimony of the state is both a source of power and the primary source of patronage – what Fernando Masi and others sometimes refer to as a “predatory state”.⁵² While popularly elected (with a primary election to select the party’s candidate), the President is much more accountable to the party than to the electorate.

Patronage and accountability to and through the party trump the formal mechanisms of checks and balances within and among branches of government – both with regard to selection and appointment of high level officials (including appointment of Supreme Court Judges) and the use of budget resources. Duarte, during his political campaign and since, has spoken to the need to attack and reduce patronage practices in government and has even proposed measures to address those practices, e.g., the modest reduction of personnel and the intent to create a “Ministry of Excellence” in Finance. The President’s strategy appears to recognize the fact that patronage is not going to go away soon but in the meantime it is imperative to introduce technical criteria into selection of personnel – a long-term but likely more viable approach. Duarte also brought on a distinguished head of an independent think tank and non-Colorado, Dionisio Borda, to head the Ministry of Finance and take charge of the initiative to increase the collection and payment of taxes. One of Borda’s priorities was to begin a program to rationalize the organization of the Ministry and reduce the number of personnel in the Ministry. Borda clearly understands the challenge and readily points out that thus far only about 1% of the Ministry’s total workforce has actually been cut – clearly indicating that significant change will not happen soon, but also noting that even that modest reduction is a beginning. Borda also seems to recognize that at this point, the opponents to the personnel reduction initiative and those with a major stake in continuing the patronage system (i.e., the large majority of the public sector labor force and the Colorado party – see Political Map One) are clearly at an advantage over Duarte.

⁵² Interview with Fernando Masi, Centro de Análisis y Difusión de la Economía Paraguaya, CADEP, March 5, 2004. The purpose of the predatory state is to provide only minimal means of government services, while using the status of exclusive government controls, to extract income from the rest of the constituents for the benefit of a favored few. In the case of Paraguay, the favored few are, of course, party loyalists.

While the President's authority may appear extensive, the level of party support and budget resources available place limits on that authority. Clearly, there are issues that the President will lack sufficient authority to address. First, despite some preliminary indications that Duarte Frutos is attempting to gain better control of the party,⁵³ paradoxically, his ability to do so remains circumscribed by the party's demand for patronage (that is, more control will only come through reward to those coming on board – and Duarte's ability to reward is limited to patronage). Second, the problem of lack of budget resources hinders plans for reform and new investment, a chronic problem suffered by governments since the beginning of the transition. The restrictions of a chronically low budget also restrict Duarte's possibilities for modifying the current patronage structure in government – he has neither the luxury of being able to hire both Colorados and technically qualified independents as an initial strategy to inject quality into hiring criteria, nor does he have the ability to pay salaries at a level sufficient to attract the most talented candidates. Finally, the need to keep various competing interests sufficiently happy so as not to cause serious political management problems likely means that the administration will need to continue to turn a blind eye to much of the corruption in central government...the price perhaps of pursuing change.

Masi argues that the democratic transition has meant little with regard to improving the capacity of the executive branch. Instead,

...el sector público ha permanecido sin cambios. La administración y la gestión pública siguen teniendo un carácter centralizado, burocrático y poco transparente, con altos grados de informalidad al interior de su estructura. Los servicios públicos continúan siendo de baja calidad y baja cobertura. Los recursos humanos siguen con escasa calificación, con remuneraciones salariales heterogéneas y con el predominio de las lealtades políticas antes que los méritos profesionales.⁵⁴

Much of the blame for the present state of the executive branch can be laid at the doorstep of patrimonialism.

Patronage thwarts efforts at improving capacity and more efficient functioning of the central government. Between 1991 and 2001, the ratio of wages and salaries to investment in the national budget has gone from approximately 2:1 to 4.5:1⁵⁵. Compared to 1991, in 2001 it cost over twice as much in salaries to administer the same amount of capital investment, mainly because the size of the public sector expanded by about 50%. But since little additional capital budget was provided, productivity and efficiency dropped steadily and dramatically. Part of the problem is a budget that has grown very little in real terms faced with the demands of a highly patrimonial system – where one of the few resources or benefits the central government has to satisfy demands is a post in one or another of the state agencies. Under the circumstances there are insufficient resources to permit the state to function effectively, let alone efficiently. While there have been and are efforts to train public employees and improve effectiveness and productivity, these tend to be financed through and as a condition of loans from one or another international finance institution, and do not really represent a strategic approach to dealing with the problem.

⁵³ Several interview subjects asserted that Duarte was attempting to consolidate his control over the party, particularly over the so-called “*seccionaleros*” in the interior. There is however, little concrete evidence regarding success.

⁵⁴ Fernando Masi, “Paraguay: Estancamiento Económico y Desgaste Político en los Años del MERCOSUR”, in R. Bouzas (ed), *Realidades Nacionales Comparadas*. Fundación OSDE-Altamira, Buenos Aires, 2002. (Reprint copy, p. 16)

⁵⁵ See Gladys Benegas, “Evolución de la Economía Durante el Proceso de Transición Democrática”, pp. 221-228.

One must be careful to not underestimate the challenge of rationalizing and reforming public administration and the entrenched opposition of vested interests those reforms will encounter. While new laws or regulations to begin the task of reform are vital, they will clearly not be sufficient nor is there any guarantee that they will even have any effect. For instance, the recently passed *Ley de Función Pública* was a relatively modest attempt to do just that, but there are now, according to different observer estimates, between 800 to over 1000 challenges to the law before the courts. Few are optimistic that the law will actually hold up, much less do what it was designed to accomplish. Not only will new laws be required, but also other policy and ideas will need long-term sustained commitment to making them work if they are to succeed.

3. Local Government Sphere: Paraguay's constitution defines the state as "decentralized and unitary." That statement succinctly describes the tension between decentralized and centralized government in Paraguay. "Decentralized" government currently consists of 220+ municipalities⁵⁶ and 17 departments, all with popularly elected mayors and municipal councils and governors and councils at the departmental level. In addition, there are "deconcentrated"⁵⁷ representatives or delegations of national agencies located in many municipalities – e.g., local *Direcciones Departamentales de Educación, Tribunales de Justicia* (many of which have recently received major infrastructure upgrades through IADB loans), the national electric company, the national water agency, and others. These, however, are not under the jurisdiction of local government; instead, they represent the "unitary" element referred to above. Capacity and authority for service delivery and decision-making by local government varies widely from municipality to municipality according to size and income generation potential/capacity. Larger municipalities tend to have substantial capacity to raise their own income, but smaller entities must depend on the central government for transfers. As one might expect, the larger municipalities can and generally do considerably more – the budget of the Municipality of Asunción is second only to the national government. Size, however, brings complications; Asunción has 12 unions and 600 *comisiones vecinales* with which it must deal.

Although the appropriateness of decentralization and the role of the municipality are debated among some policy elites and stakeholders at the local level, the municipal function appears to be much more adequately defined than that of the Departmental government, which almost appears to be the odd man out in Paraguay. The team interviewed several governors but the best definition of its role was "coordination" and when asked specifically of what and when, the replies turned vague.⁵⁸ Perhaps the best definition was given by the governor of Guairá, who argued that he tried to maintain and promote an overall perspective for the development of the department and worked on issues that would benefit the majority of the department's municipalities. But in comparison to the more direct and mundane but vital role of picking up the garbage in the municipality, the Governor's "overall perspective" appears intangible. One area where "coordination" became more explicit was in splitting costs or sharing resources with the municipalities on certain public works projects. But when asked more specifically if the Governor promoted the more coordinated development of micro-regions or other coordinated activity among municipalities, the answer was generally no. The departments are almost completely dependent on transfers from the central government via "royalties"⁵⁹, and transfers from municipal tax collections (which the municipalities almost universally resent). With virtually no means for raising revenue on their

⁵⁶ New municipalities can be created with as few as 5,000 inhabitants.

⁵⁷ Deconcentration is considered one form of decentralization. See the discussion in Prats, *et al, op. cit.*

⁵⁸ The governor of Central Department offered a rather cynical view of the role of the Governor, arguing that it was nearly completely marginal, calling himself a "pasa papel" (paper shuffler). That view is not surprising given the fact that his budget is roughly \$3 million for a department with 2.5 million inhabitants.

⁵⁹ Income generated from Paraguay's participation in the sale of electricity from the Itaipú and Yacyretá hydroelectric installations shared with Brazil and Argentina.

own, the governors can do very little with respect to the delivery of goods and services to the local population.⁶⁰ However, the governors often play a vital role in assisting the smaller municipalities.

Local government, including the executive and legislative branches, at both the municipal and departmental levels is popularly elected, with party primaries held to decide candidates. In some municipalities and departments, primaries and popular elections have resulted in near replication of results seen at the national level, i.e., the mayor representing one party and another party in control of the municipal council, such as in the cases of Caguazú and Villarica. Despite the more democratic electoral opening, however, local government remains largely two-party, with only the occasional representation of third or fourth parties.

Because of the way in which they are now elected, Paraguay's mayors are among the most accountable to the electorate in Latin America. The members of the municipal council are slightly less so, since they still are elected from party lists rather than by district. At the department level, the process of election is the same as that at the municipal level – and like the mayors, the governor has now become one of the more electorally accountable officials in Paraguay. Although electoral accountability has clearly increased at the municipal level, with the exception of the very largest cities, municipal councils, mayors, and governors have relatively little capacity to satisfy demands of constituents – thus making the notion of accountability at the local level something of an empty promise.

Accountability has become a much more real issue with the development and rapid expansion of *comisiones vecinales*. The *comisiones* are legally-mandated neighborhood associations formed in the urban areas of municipalities⁶¹ mostly for the purpose of organizing and presenting demands for various public works (largely for street paving and drainage) projects to be financed by the municipality from that part of the local budget financed by royalty transfers. Since 1997 the *comisiones* have undergone a rapid expansion –in Villarica, some 110 have been formed and in Central Department, there are over 2,000. Though mostly oriented to public works, some have been created to target more specific interests such as women's rights, sports, and youth. The collective *comisiones* select members for a *coordinadora* who has the role of prioritizing various proposed projects for selection by the municipal council. While a very interesting and useful exercise in citizen participation, the amount of resources available to attend to the demands made by these groups is extremely small. In Villarica, it was on the order of one dollar per capita. Clearly, even when the neighborhood *comisión* chips in to defer some of the costs of paving a street, which is invariably the practice, very few projects can actually be implemented. The problem here, of course, is that participation and expectations are being raised with little real hope of being fulfilled – again turning accountability into an empty promise.

Two interrelated elements continue to plague the possibility of improving governance at the local level – patronage and low levels of resources. The national pattern of recurring to government for solving employment problems or for rewarding the party faithful is repeated at the local level, which has meant considerable growth in the number of personnel and consequent growth in salary costs. In the municipality of Asuncion the number of employees has nearly doubled. In part this came about through a part of the law that makes it extremely difficult to remove public employees once they have been placed on the budgeted payroll and provided protection to those that had been brought in under the previous administration through patronage appointments. The two previous mayors then made their own appointments that resulted in a significant increase in staffing. A major consequence was that salaries consumed an increasing proportion of the budget, leaving little for other expenditures. When the present

⁶⁰ The annual budget for the Central Department is approximately US\$3 million. But with a population of approximately 2.5 million, the budget translates to slightly over one dollar per capita.

⁶¹ The rural counterparts are referred to as *consejos vecinales*.

Intendente of Asuncion took office, 117% of current expenditures went to salaries.⁶² The problem of high expenditures on salaries plagues virtually all municipalities, thereby severely reducing funds available for important matters such as depreciation and maintenance – which simply get perennially deferred – let alone resources for new capital investment. Paraguayan municipalities suffer from extremely small budgets, but the problem is made even more onerous by the fact that the large majority of their small budgets is taken up by salaries to employees brought in through patronage arrangements.

As USAID and other donor projects have shown, professionalization or simple training of local officials can pay substantial dividends. In Villarica, and Caguazú technical assistance programs in financial management have resulted in significant increases in tax collection and budget resource management.

In Paraguay, as in most of Latin America, an ongoing debate is taking place about the desirability of decentralization.⁶³ Merits of the arguments aside, there are some structural elements that seem to impede a wider dissemination and implementation of decentralization in Paraguay. The first has to do with the clarification of roles at different levels of the state in a highly patrimonial and paternalistic society. In Paraguay, it is customary to receive from the state, to assume that the state will address and satisfy demands of the citizenry – with the result that local initiative to address problems remains relatively uncommon.⁶⁴ Many important services (electricity, health, security and police, education, roads and a majority of public works) are managed and financed by the central government. The role left for the local government is collection of local taxes on property and business, some public works as budget permits and basic services such as garbage collection, street cleaning and maintenance, and the like – the sorts of roles that no one notices when satisfactorily performed, but that arouse anger when poorly performed.

Even if the role of the municipality is relatively clear, that of the Department remains much less so. Viewed from Paraguay's highly patrimonial tradition, the Department makes sense as an entity to assure overall political control over the municipalities. But since the governor is now given little in the way of resources to actually control the municipalities, politically or otherwise, nor resources to carry out more problem-solving or service delivery activities, the concept of department seems to make little sense – and indeed can be seen as a barrier to improving definition of roles and functions at the municipal level.

Second, the ability to effectively carry out whichever roles are left to the municipality, however, depends on availability of resources, which in turn depends on society's willingness to pay. Since the custom has been weighted more to receiving than to paying, the chances for quick remedy to the problem of increasing revenues in any significant way seem rather slim. The fact that the Central government is undergoing a financial crisis, with only a recent narrow escape from default, lowers expectations about how it might help the municipalities.

D. Civil Society Arena

Throughout the dictatorship, the Colorado Party had almost total vertical control down to the lowest levels of society, dominating society and co-opting special interests. The costs for opposition to the party were high. Civil society remained dormant and no significant coalescing groups emerged. After 1989, people gained freedom to speak, although without any assurance of effect or impact on decision-making. Private actors began a gradual evolution from spectator to participant, but without much direction,

⁶² Interview with Enrique Riera, *Intendente* of Asuncion on March 17, 2004.

⁶³ See the rather different points of views on decentralization offered by Victor Flecha and CEPPRO.

⁶⁴ There have been efforts by USAID, GTZ, and others to address this problem through strengthening citizen participation. While these programs seem successful in better organizing and prioritizing demand from the citizenry, it is unclear whether they really address the fundamental problem of lack of resources to attend to demands.

coordination, or cohesion. The demonstrations in March 1999 united distinct interest groups (youth and *campesinos*), established the presence and potential of civil society actors as a dynamic pro-democratic social force, created some momentum for change, led to the formation of a handful of organizations, and then waned without fulfilling many of the high expectations that had grown out of the initial demonstrations.

Over the past five years, civil society has slowly been gaining strength and presence, but is still very weak, fragmented, and lacks coordination and strategy. The engagement of civil society to change public policy is very nascent; groups tend to focus on individual projects piecemeal rather than formulate policies towards the State. Traditionally, there has been no authority or voice other than Church or State. Civil society actors have not yet gained any real role or power, but instead appear to be occupying spaces abandoned or left to them by the regime. Paraguayan civil society in general is passive and accustomed to a relationship with the State of *patriarquismo*, rather than participation. We were told repeatedly that communities routinely accept outrageous violations of their rights and the State's neglect to fulfill its duties, but without becoming outraged. When protest occurs, it often takes the form of demands to the government and confrontation/demonstrations directed to the satisfaction of immediate individual interests, and without negotiations or alternatives or follow-through. Understanding and comprehension of the nature and relationship between public responsibilities, obligations, and democratic participation is minimal. Disillusion and dissatisfaction with democracy has grown. Social instability and economic conditions have worsened as a consequence of the recent economic crisis, and society increasingly looks back at the days of the dictatorship with fondness: *Ahora hablamos más, pero comemos menos*.⁶⁵

On the positive side, there has undoubtedly been an important evolution of private sector actors, and increasing involvement and demands for engagement and participation, although the means and extent of participation need to be developed. Regardless of demonstrable impact on governmental decision-making, the government has had to allow civil society some presence, often in the form of *mesas de concertación/negociación*. This presence and role in and of itself is a big step forward. Another significant step was seen in the recent intervention and influence of a spontaneously formed network of NGO's on the selection of new Supreme Court justices. This effort successfully united diverse organizations to work towards a common goal.

The Duarte administration has reacted with hostility to civil society generally, and in particular towards NGO's. President Duarte has publicly criticized NGO's on several recent occasions, alleging that they are not representative and receive a lot of money for doing little. The Solicitor General declared the executive's position that NGO's should be subjected to governmental regulation and accountability. Civil society groups informed us that, as they have gained some political voice, they have increasingly been subjected to governmental interference with their licensing and legal status. We were told of one NGO that had to obtain a court order for the executive to issue its operating license (*credenciales*), and then the executive refused to comply with that order. To date, the NGO community has not arrived at any strategies or unified position with regard to governmental interference or proposals for regulation.

Local governments have been much more receptive to civil society participation than the central government. Participation at the local level is channeled primarily through a system of neighborhood associations, or *comisiones vecinales*.

Labor Unions, Campesino Organizations, and Cooperatives:

Campesinos are considered the most powerful and activist civil society actor. One official told us that this group has the most potential to destabilize the government and influence decisions. Campesino organizations frequently organize demonstrations and strikes to support demands for higher prices for

⁶⁵ Today we talk more, but eat less.

crops and land, and have formed umbrella organizations to consolidate and increase their influence. Large Brazilian agribusiness has purchased and is farming significant territories in Paraguay, which has also led contributed to campesino demonstrations, destruction of property, and occasional violence. The use of commercial pesticides has become an additional important rallying point in opposition to large agribusiness. Increasingly, campesinos are occupying private property and forcing confrontations when eviction actions are taken. One person commented that the campesinos have developed the skill of invading and occupying lands as a profession.

Cooperatives are also important players in Paraguay. The cooperative movement started in the 1940's and gained momentum through legal reforms in the 1970's. Currently, there are 550-600 cooperatives operating in Paraguay, as well as a federation of cooperatives. They provide financial as well as a variety of other services to their members, including technical assistance, business planning, health clinics, stores, etc. In effect, they provide some services that the government should be providing. Membership is very expansive, and extends to small businesses, producers, teachers, home employees, and even housewives. Recent laws have imposed regulatory practices and have established an autonomous regulatory agency to provide for oversight and supervision.

Seven unions that do not work together and insist on separate negotiations with the government represent the teachers, but only two of those unions have significant membership. In a surprising show of power last year, the teachers unions mobilized an unprecedented two-week strike over fiscal changes that reduced their retirement pay; the longest teachers' strike prior to that had lasted only three days. The Minister of Education has had success negotiating with the teachers unions on issues including merit-based selection, and this government/union relationship appears to function relatively well.

Other unions include workers' unions, which are largely weak, illegitimate, and corrupt. The bus drivers' union is powerful, particularly during the elections because they provide party transportation.

Business Associations: Although business associations are among the oldest expressions of civil society in Paraguay, they had little voice during the Stroessner period. Those that questioned or criticized Stroessner would run the risk of economic ruin. The oldest associations include the *Bolsa y Cámara de Comercio*, the *Unión de Industriales de Paraguay*, and the *Asociación Rural de Paraguay* (representing cattle growers), the *Centro de Importadores*, and *Federación de la Producción, Industria, y Comercio* (FEPRINCO). Interestingly, these groups excluded agriculture – as the agriculture sector was mostly made up of small producers. After 1989, the organized private sector began to emerge in importance but has not had much success in changing the economic dynamic of the country. The profound effect of globalization in the region and business' inability to respond to the challenges and opportunities presented as well as Paraguay's low international prestige and reputation for corruption is among the reasons given.

Recently, concern regarding “*la aplicación de democracia*”, “*seguridad jurídica*”, respect for private property, and what they see as lack of clarity in the rules of the game has caused some groups to become increasingly active in both politics and the problems of public sector management.⁶⁶ For instance, the Mayor of Asunción recruited FEPRINCO to a public-private group of citizens and organizations to assist in solving some of the municipality's problems. Business associations have begun to sense more receptivity on the part of the state and are increasingly included in “*mesas de concertación y negociación*”. Another group, the *Asociación de Empresarios Cristianos*, though not strictly a business association, has become increasingly active in the discussion of social issues and on issues of corruption.

⁶⁶ Perhaps the clearest case of increased private sector activism is the emergence of the *Patria Querida* political party, headed by Pedro Fadul, former president of ADEC. While the party is NOT an extension of ADEC, many of its members occupy prominent leadership positions in the party and in the Congress.

The most politically active (and reportedly quite powerful) sector is that representing the newly emerging soybean agribusiness enterprises. Its large scale planting methods (fencepost to fencepost), modern techniques, export orientation, and frequently transnational ownership, have threatened traditional agriculture and land-holding patterns and have indeed caused growing conflict. The soybean growers are organized into three main groups, the *Coordinadora Agrícola de Paraguay*, the *Asociación de Productores de Soja* (APS), and the *Cámara Paraguaya de Exportadores de Cereales y Oleaginosas* (CAPECO). The first is primarily a “front” organization created to represent the interests of large-scale Brazilian soybean planters that have thousands of hectares under cultivation. Similarly, the APS mainly represents large-scale soybean producers. Both organizations, while considered effective in protecting their own interests, appear little interested in the overall economic dynamic or business environment. CAPECO represents more traditional and transnational interests such as ADM and Cargill, and is considered much more open about its interests and more concerned with broader issues of the economic and business environment. Though more open, CAPECO does not have the resources of either the *Coordinadora* or the APS, both of which very actively lobby the Congress and the Executive branch.

Media: Under Stroessner, state control and direct censorship of media were the norm while opposition media was consigned to the fringes – as appendages of the Catholic Church. Fourteen years later, Paraguay does indeed have an independent and increasingly professional media of varied political and ideological orientations. Development of the country’s Fourth Estate, however, is hindered by at least three factors: a highly partisan media, indirect censorship stemming from a sometimes-hostile legal and political environment, and the influence of political patronage.

First, the line between politicians and media in Paraguay is blurred. Print and broadcast media are privately owned, but ownership is so closely tied to partisan political and economic groups that they lose any semblance of objectivity in daily news reportage during election cycles; this, in turn, weakens public confidence in media.⁶⁷ Former president Wasmosy owns Grupo Multimedia, which controls one daily newspaper, one magazine, and two radio stations. Colorado presidential candidate and tobacco entrepreneur Dominguez Dibb, meanwhile, owns the daily *La Nación*, while other media owners are known to have cozy relationships with officials, and to have thrown their weight behind electoral campaigns for Liberal and Colorado parties in recent elections.

Second, Paraguay’s legal environment has indirectly restrained media. The 1992 constitution does guarantee freedom of expression, but in Paraguay (as in other countries) criminal prosecution for defamation has been used to intimidate journalists who print exposés of corruption or cover other sensitive political issues. Paraguayan criminal codes permit defamation actions against journalists reporting about public actors and actions. Libel and slander remain criminal offenses that carry penalties ranging from a fine to two years’ imprisonment. Prominent journalists have criminal lawsuits pending against them; others have had to pay monetary fines. The editor of *ABC Color*, who faces some 20 lawsuits for libel brought against him by public officials and political leaders, was recently ordered to pay hefty monetary damages. *Ultima Hora*’s editor is similarly swamped with defamation actions, most spurious.⁶⁸ Another law precludes reporting of “intimate information” about anyone, even public figures, and includes basic personal information such as birth date, religious affiliation, etc. Judicial threats and pressure, including calls from judges and prosecutors to newspaper officials, are not uncommon. Despite these constraints, these tactics have failed to hold back a robust corps of investigative journalists from their near-daily reporting of corruption scandals in the Paraguayan media. Journalists have combined forces and consolidated pressure for reform of these laws, as well as passage of a law allowing public access to information, all of which are currently pending.

⁶⁷ Recent barometer surveys show that less than 10% of Paraguayans surveyed felt news media were trustworthy, somewhat below the mean for Latin America.

⁶⁸ Interview with Antonio Carmona, Editor, *Ultima Hora*. March 2004.

The sometimes-hostile political environment has had a chilling effect on media. Several journalists who have broadcast or published corruption exposes have been physically threatened. During the 2000 vice-presidential elections, the *Radio Primero de Marzo Asunción* was repeatedly threatened and had its signal jammed. In 2001, an investigative journalist (Salvador Medina) was murdered and others threatened for publishing articles on organized crime groups and their alleged links to Paraguayan officialdom. In 2003, there was an attempted kidnapping of the daughter of an investigative reporter for *ABC Color* and the host of a popular radio program.⁶⁹ For these reasons, Freedom House continues to classify Paraguayan media as “partly free” even though there have been no reported overt attacks against media since 2001 and no direct censorship for more than a decade.

Third, the same patronage problem that hobbles the public sector also has adverse effects on media. Political rather than economic and technical criteria determine the granting of radio frequencies, a process that has become selective amid increased competition for limited advertising revenues in a small market. Powerful commercial radio associations have joined forces against community and alternative radio stations and have pressured the government to shut them down. The National Commission for Telecommunications (CONATEL), the state agency charged with regulating radio frequencies, repeatedly confiscated the equipment of several community radio stations, while others have been waited in vain for CONATEL to find radio frequencies for them. In 2001, community radio stations achieved a victory when the Comptroller General's Office ruled that they could request permits without having to bid for frequencies in a public auction. That change may help to develop this important medium.

Comisiones/Consejos Vecinales: The primary route for citizen participation and engagement at the local government level is through the legally mandated *comisiones vecinales* or neighborhood associations (in urban areas) and *consejos vecinales* (in rural areas and *colonias*). The *comisiones vecinales* began working more actively and expanding in the 1990's. They are comprised of elected representatives and focus their efforts primarily on obtaining public works, such as street paving, potable water, and other community improvements. There are *comisiones* that have a continuing existence, as well as *comisiones* that are established temporarily to accomplish discrete projects. Their ability and degree of participation depends largely on the attitude and cooperation of the mayor and *junta municipal*. *Comisiones vecinales* are able to attend and participate in public hearings where the budget and *rendición de cuentas* are presented, although the level of their input and influence is unclear, and their level of interaction varies. In some areas, they have become more active in seeking public access to information from the municipal authorities, but it does not appear that this has been aggressively explored. A position of *Coordinadora* has been formed in some municipalities to represent all of the *comisiones vecinales* and work within the mayor's office. Although the number of *comisiones* has expanded rapidly their scope and influence and ability to make meaningful demands is quite limited.

NGO's (civic and rights-based organizations): NGO's have grown, become specialized, and gained technical expertise, but they have weak structures and few channels to the citizenry. They do not coordinate or work together well or often, and do not view their individual organizations as sharing interests or having much in common. The NGO community in general is divided, competitive, distrustful, and reflects a low level of association building and strategic planning. Attempts at creating an umbrella network have not worked well. Likewise, there has not been much success in developing partnerships between the business and NGO sectors. Recently, however, six NGO's with disparate organizational interests (legal, environmental, business, etc.) came together and combined forces to create an opening for public participation in the selection process for the new Supreme Court justices. They overcame the resistance of the Council of Magistrates and succeeded in opening and expanding the discussions and judicial selection process to include civil society, which was unprecedented.

⁶⁹ Committee to protect Journalists (2003) http://www.cpj.org/regions_04/americas_04/americas_04.html

Gender: The Paraguayan women's movement united and coalesced around issues of blatant discriminatory actions and restrictions during the dictatorship. The *Coordinación de Mujeres de Paraguay* – an umbrella organization incorporating 12-15 women's NGO's – was formed in 1987 and has operated to date as the single strongest and well-respected Paraguayan women's NGO. The creation of the *Secretaría de la Mujer* in 1993 resulted in the channeling of women's issues primarily through that institution. The *Coordinación* has worked on its own, as well as with the *Secretaría*, to achieve some significant impacts and legal reforms, including domestic violence legislation. The *Red de Mujeres Políticas*, also established in 1993, has directed its efforts at increasing women's political participation, but has been frustrated by the male-dominated patronage systems of political party leadership. A group of women lawyers – *Abogadas de Paraguay* – lobbied for approximately 18 months for the appointment of a woman to the Supreme Court, which just occurred. A *Coordinadora de Mujeres Rurales Indígenas* represents the interests of rural indigenous women. Other than these and a handful of other organizations, there are very few women's NGO's in Paraguay today, and little commitment or cohesion within and between organizations.

Paraguayan women's NGO's are remarkably weak and have shown little response to actions of the current administration perceived as undermining the role and capacity of the *Secretaría* and threatening the development and enforcement of women's rights and State policies. Women's organizations have been largely passive in the face of executive disinterest in gender policy and discontinuation of programming efforts, which have been received without serious protest or unified strategy. Women's NGO's are reportedly "sleeping." On March 8, 2004 (the International Day of the Woman), however, the *Coordinación* took action by publishing a *manifiesto* in the newspapers listing the current administration's failures to address issues of gender equity and discrimination, and expressing concern over its lack of approval of the second *Plan Nacional de Igualdad de Oportunidades entre Mujeres y Hombres* (2003-2007). President Duarte signed the Plan that afternoon. Response to the remaining list of concerns and the implementation of the Plan, however, remain to be developed and depend heavily on the questionable commitment and ability of the politically and technically weak *Secretaría*.

Women's NGO's have been criticized for having elite leadership characterized as out of touch with issues affecting the majority of Paraguayan women, and emphasizing political leadership over service delivery. In response, women's NGO's contend that service delivery through handout programs is merely palliative, and that genuine reform will only be achieved by increasing political leadership and changing underlying economic and other policies. The most urgent policy reforms were identified as sexual and reproductive health, poverty reduction with analysis and focus on women, and women's political participation. Significant progress and reforms in any of these areas is unlikely to be seen in the context of the present administration's policies and apparent disinterest in gender issues, and the lack of unified demands or pressure from civil society.

Human Rights: Very few local agencies or entities are dedicated solely to human rights issues. The *Coordinadora de Derechos Humanos* is an umbrella organization of 35 NGO's, most of which are small or focus only indirectly on human rights issues. Violation of human rights is not as widespread or significant an issue in Paraguay as in other Latin American countries, although there are cases from the dictatorship awaiting decisions and several cases before the InterAmerican Commission on Human Rights and the Court. A Truth Commission is being established to investigate and address human rights violations during the dictatorship. Campaigns to raise awareness and consciousness have greatly reduced the incidence of military and police abuse of authority. Human rights concerns emanate more generally from the overarching and pervasive problems of corruption, lack of meaningful access to justice, and impunity that allow widespread violations of rights to occur without redress.

Contralorías Ciudadana: The *Red de Contralorías Ciudadanas* is an umbrella organization for local groups that act as citizen watchdogs to monitor government expenditures, corruption, and abuse of authority. Although they do not have any official role or function, they contact the press, publicize their findings, and otherwise claim to exert “moral authority.” The groups are comprised of volunteers who have relatively little time or expertise to devote to this ambitious undertaking. The individual *Contralorías* can only handle a limited number of cases and do not have the ability or resources to conduct thorough investigations or pursue complaints through resolution. They see their role as raising consciousness and awareness, but their influence and impact at the national level is questionable. At the local level, the CC appears to have church backing in many regions, and in two cases succeeded in applying pressure that resulted in the removal of corrupt public officials, i.e., a department governor and a judge.

Indigenous/ethnic groups: Indigenous and ethnic divisions are not as significant in Paraguay as in other Latin American countries because of its very small indigenous population. Only 1% of the country’s population identifies itself as indigenous, most of which live in isolated rural areas. The largest groups inhabit the Chaco and Canindeyú regions. Although the legal framework recognizing and protecting the rights of indigenous groups is favorable and non-discriminatory, implementation and enforcement of those rights has been irregular. Indigenous groups in general have significantly less access than other rural populations to education, health care, medical services, and labor and economic opportunities. Land rights, usage, and habitat destruction are principal concerns and areas of conflict and discrimination. Several NGO’s have been created to defend the rights and interests of indigenous groups.

IV. DISTILLING THE STRATEGY – RECOMMENDATIONS

The fundamental democracy governance problem in Paraguay was defined as: “persistence and pervasiveness of a patronage system (that) has created a lack of transparency and accountability and a lack of capacity to fulfill the government function”. Patronage is deeply entrenched in politics AND society and plays a vital role in maintaining the dominance of the Colorado Party. Though other parties do not enjoy the patronage privileges enjoyed by the Colorados, where they have had the opportunity to exercise the prerogatives, they differ little from the Colorados in their behavior.

Patronage has historically been the grease of politics in Paraguay since the founding of the PLRA and the ANR in the late nineteenth century. The promise of jobs or other benefits of clientelism and patronage assures loyalty of militants – the withholding of such benefits acts as a brake on behavior that deviates from party norms. The dysfunctions of patronage were amply noted: bloated bureaucracies, corruption, and accountability to the party rather than the electorate. The result has been a blatant distortion of the accepted definition of the role of the state – the state is there to serve the interests of the party rather than serve the needs and demands of society.

While patronage is the fundamental democracy governance problem, there is little possibility of attacking the problem head-on. For the executive to do so would likely spell political suicide, while the donors do not have the sort of leverage (political or economic) required to dislodge a system so entrenched in Paraguayan society. The executive lacks not only political resources (as should be clear from the discussion in Section Three) in terms of party or coalitional strength, he also lacks the legitimacy to carry out a frontal attack. First, the expectations of party members and internal party coalition that put him into the presidency certainly revolve (in large measure) around patronage rewards. Of note here is that those expectations appear to be significantly less among the reform members of the coalition than those belonging to more traditional sectors of the party. Second, most if not all of the Colorado party’s operational resources are derived from party “tithing” (approximately 10% of each Colorado affiliated

government official's salary goes to the party), and from extra-official payments from state enterprises and the bi-national corporations. Third, the state bureaucracy has mostly been built through patronage rewards to Colorado party faithful – a frontal attack against patronage would threaten the positions and most certainly incite the opposition of some 200,000 public sector workers.

Dealing head-on with patronage would also require the availability of significant economic and financial resources – something that the Paraguayan government clearly lacks at the moment. Substantial resources will be required to downsize the patronage-laden bureaucracy (through severance packages and other incentives). Additional resources also will be needed to provide incentives to talented individuals to come into government service. The creation of a “ministry of excellence through the Ministry of Finance is a small scale attempt to put that idea into practice. Likewise, the Mayor of Asunción has also raised the bar for the positions of City Manager and Chief Financial Officer by hiring professionals. These very modest efforts, however, will need to be repeated on a much larger scale in order to gain serious traction in dealing with patronage and its ills.

Given the context for, the complexity of, and the tenacity of the democracy governance problem, the development of a feasible strategy (ies) that attempts to deal directly with patronage appears to be out of the question, and most certainly out of USAID/Paraguay's manageable interests. That said, however, a variety of potential strategies could not only address the problem indirectly, but also focus on generating demand and begin to build constituencies for reducing some of the effects created by patronage. The team strongly feels that even if the Mission cannot address the problem directly, it should nonetheless employ a standard that requires DG activities to develop mechanisms that at least indirectly address or assist in creating a more hospitable environment for treating the problem, that effectively address problems of accountability and transparency, that assist in building governance capacity, or that assist in creating a broader constituency for reforms of the political and economic processes that have perpetuated the patronage system.

The team's recommendations focus on governance issues at the national and local level. Recommendations are directed at national and local government accountability, at improving transparency and governance in the rule of law, at upgrading technical analytical capability within the legislative branch, and for initiating a broader, national dialogue on the reform of economic and political processes. Throughout, there is a common thread of attention to developing broader constituencies and mobilizing demand for reforming patronage processes – of attention to creating a more amenable environment for reducing the effects of a 100+ year-old system that has rewarded party clientele and loyalty over accountability and good governance.

A. Public Sector Accountability

Work with reform proponents within and outside the political parties to create demand for upgrading standards and competencies for recruiting individuals for cargos de confianza⁷⁰ within the government. This recommendation proposes to work within the current framework of patronage. Acknowledging that patronage will not be dismantled in the near future, within that framework it is nevertheless possible to begin to change standards for patronage appointments and to begin to weed out the corrupt officials or at least to place them in positions where they can do less harm. Its purpose is to work with reform proponents within the parties (at the higher levels of leadership, ideally, and which according to our interviews actually exist), the government, and outside allies from business, media, and the CSO/NGO community to create demand for injecting standards of technical competence into

⁷⁰ *Cargos de confianza* are patronage positions. More importantly, they are the posts that are unprotected by public sector labor laws. Those in *cargos de confianza* serve at the convenience of their superiors.

recruitment and appointment of government officials in addition to the regular requirements of party loyalty, political ties, family, or client relationship. Assuming realistically that party ties and political loyalty will continue to be the first standard when appointing public officials (the appointment of Dionisio Borda as Minister of Finance notwithstanding), this proposal also seeks to have candidates screened for capacity to do the job – party loyalty is fine, as long as the candidate can actually get the job done. There is some precedent for this proposal in Paraguay: in the recent selection of new Ministers of the Supreme Court, demands from the NGO sector appear to have caused broader discussion about and publication in the newspapers of the qualifications of the candidates. While not apparently determinant in the actual selection of the justices by the President or the Senate, the theme of qualifications had much more public prominence than ever before.

In the United States and other industrial democracies, patronage appointments are still very much the rule for posts at the highest level, but with a difference. Not only does the candidate for the position have to be a loyal party affiliate, the candidate must also have the skills and technical capacity to do the job. Even during Mexico's PRI governments, candidates to higher-level positions in government had/have to have very solid resumes⁷¹ in order to be appointed. From our interviews, it is clear that there are party and government officials in Paraguay (including the *Intendente* of Asunción, the Minister of Finance and the Minister of Education), as well as others from the business and NGO community, concerned about the problem of recruiting officials who can actually do the job assigned. Although there is a tendency to avoid political parties in carrying out activities to improve accountability and transparency, in this case, the active participation of political parties (through reformers) would seem indispensable. At the same time, working only with reformers might leave them marginalized within their own parties. It is thus important to develop and mobilize a broader constituency through the development of alliances with NGOs, business associations, the media and others.

Some activities that might be developed under this recommendation are as follows:

- ✓ In order to create a broader constituency in the parties for reform, forums or seminars might be held to discuss and analyze the costs of maintaining a strict patronage system, and how its reduction could produce benefits to offset the cost of paring down or changing the rules of the system. Some of these forums could later be opened to potential allies or to expand the constituency base.
- ✓ Development of a broad-based alliance through the initiative of reformers in the political parties to both broaden the constituency and expand demand for reform of public sector recruitment. The broader alliance will also be vital to re-centering the locus of accountability away from the parties and can play a key role in supporting accusations of corruption.
- ✓ An activity could be developed to recognize and foster “centers of excellence” within the public sector. One possibility is to focus on one particular Ministry (other than the Ministry of Finance) around which to center this activity. This is based on the premise that there are centers of competence (outside the Ministry of Finance) despite the poor image of the public sector. The idea here is to foster a culture of “getting the job done effectively and efficiently”. Media recognition of such centers would help to legitimize and sustain the activity.
- ✓ Point out centers of incompetence. Publication and recognition in the media along with suggestions for remedy is important. It is critical to begin to develop and seek public support for the idea that “it is not ok to not do the job effectively or efficiently”. The idea here is to create

⁷¹ Interestingly, Fox's PAN party patronage demands have had the overall effect of lowering the quality of appointments. PAN has struggled to find suitably qualified party affiliates to fill important appointments.

public demand for good service and disapproval and protest over poor service. Public recognition is important to re-establish public – as opposed to party – accountability.

- ✓ With assistance of the political parties, develop a code of recruitment standards for officials in the public sector. This would clearly require the blessing of the top leadership of the party, but a signature from someone such as Duarte would go a long way in achieving legitimacy for the code. The code could/should be developed in concert with a broad alliance for public sector reform.
- ✓ Begin a bi-partisan lobbying effort in the executive branch, the Congress, and the political parties to create awareness, consolidation and movement of the broader alliance for public sector reform.

B. Local Government Accountability and Capacity

The problem of patronage and corruption is, by most accounts, just as pervasive at the local as the national level. Indeed, some have argued that more opportunities for corruption and patronage have been created at the local level (and department level) through opposition party victories in mayoralty and municipal council races. Some observers noted, “there has been a ‘liberalization’ of corruption and patronage at the local level”. The problems of corruption and accountability are generally felt more closely at the local level; for example, when the public works budget is cut to pay salaries or is consumed in paving the road to a local party *cacique*’s house, it is the road in front of a voter’s house that does not get paved. Likewise, when salaries consume local budgets and the garbage truck breaks down, garbage does not get collected. And when the municipal council votes a salary that exceeds the income of the municipality, citizen anger rises. As at the national level, the team encountered reform-minded municipal leaders in both major parties. While many are currently frustrated (mostly because of lack of mobilized support for reform), they do represent a way forward.

The local level does provide some interesting opportunities to begin to make inroads on the problem of accountability and corruption. While some of these opportunities are based on limited information, we nonetheless feel that these recommendations would generally apply to the majority of municipalities in which USAID might work. Like those recommendations at the national level, **much of the activity proposed here is aimed at increasing demand and building/mobilizing constituencies** for greater accountability and transparency.

Increasing demand for local accountability:

- ✓ Work with reform proponents in local parties to begin to analyze costs of patronage system and expand the constituency for change. Modify training at the local level to include party activists (and those likely to occupy municipal posts) in order to inject criteria for technical competence into the selection of municipal staff – instead of working strictly with staff in the municipality’s finance and accounting department, bring in other leaders to improve their own understanding. Develop “seminars” to broaden understanding of local financial limits and barriers, alternatives to expansion, and the costs of remaining within a rigid patronage structure.
- ✓ Work with the *comisiones vecinales* to create demand for greater transparency and accountability. Assist these groups so that they begin to demand public hearings and more frequent *rendiciones de cuentas*. *Comisiones vecinales* are the mandated channel for presenting demands for public works to the municipalities. In some municipalities there are upwards of 100 or more organized *comisiones*. However, because budget constraints mean that few of the many requests presented will actually be implemented, there is a fear that such organizations will lose purpose and their

current dynamic. These are also generally represented by a *coordinadora* composed of representatives from various *comisiones*. Given this infrastructure and their mandated legitimacy, it would seem an easy and logical next step to get them involved in a process to assure that municipal funds are well spent and that the municipality is in fact doing its job. It was the team's experience that not only are the leaders of the *comisiones* relatively well educated and articulate members of the community, they are also primary, directly interested stakeholders. As such, they are excellent candidates to lead a demand for greater transparency and accountability of activities and actions of the municipality. These groups should not be simply "*comisiones* for whining" – to the extent that they risk losing legitimacy – they must recognize that they have an obligation to participate in the search for solutions, not just in identification of problems. USAID could offer assistance to equip the *comisiones* with the skills necessary to begin demanding more accountability. While this would not require much effort for the individual municipality, scaling-up so that it is more than just an interesting pilot would require significantly more.

- ✓ Following the above recommendation we would also suggest that the focus of citizen participation efforts (which tend to be highly structured and TA intensive) be changed to the creation of local public-private partnerships. Rather than maintaining the naïve expectation that "the government" will solve problems, it is important that the citizenry increase its own initiative and involvement. Too often, efforts with citizen participation are simply geared to present demands – the idea here is to begin to develop strategies that actually use citizen group resources in collaboration with the local government's to solve problems.
- ✓ Change the approach of the *Contralorías Ciudadana* to creation of a broader constituency for transparency and accountability. The team's assessment of the capacity of the CCs was not particularly positive. They do not have the capacity to fulfill their self-designated task nor do they have much standing to actually pursue administrative or judicial remedies for anomalies and violations detected. A better use of their scarce resources, e.g., their status as articulate, educated, and concerned citizens, would be development of strategies to broaden their local constituency. To be effective they need to become entities with which to be reckoned. Broadening the constituency can involve very simple activities, such as forums on the sources and consequences of corruption at the local level; publication and placement of posters at public offices explaining in simple language the rights of citizens and the cost of different transactions; micro-programs on radio on how to recognize corruption and what to do about it; or talks in schools on the problems of corruption and how to avoid falling into its traps. The CCs might also examine the possibility of acting as transparency "ombudsman" for the community. The activities proposed change the CC's role as a "judicial" actor to one of raising the level of awareness and demand for greater transparency. USAID could offer assistance to re-organize groups, re-tool their techniques, and assist in the development of strategic agendas for raising demand.

Local government capacity:

- ✓ Continue and expand assistance to municipal governments aimed at increasing technical skills and capacity – particularly in financial management and fiscal expansion. A greater emphasis also needs to be put on training and developing cost effective models for medium and smaller municipalities – particularly those that are mostly reliant on the center for transfers to finance budget. Attention should be given in training for development of cost effective models for increasing revenue – e.g., cadastres that have inflation indexed revaluation mechanisms or local sales comparability revaluation. The development of periodic regional conferences among municipal officials to discuss lessons learned and new and efficient techniques for managing local government.

- ✓ Development of a scheme to reward innovation and effectiveness in local government. In Mexico a program to annually select the best examples of local innovation has been adopted. The program provides public recognition through peer and media attention, and appears to have spurred some degree of competition among municipalities.

As an adjunct to improved training, assistance should be provided for reinforcing the link between tax compliance and the delivery of local services. While some should focus on legal enforcement mechanisms by the municipality, peer pressure schemes that publicly identify local cheaters and evaders (e.g., through prominently posted lists) can be very effective and cost efficient.

- ✓ Creation of centers of transparency and excellence in local governance. While the public sector is frequently criticized for not or inadequately discharging its responsibilities, it is rarely applauded for those things that it does well. Low salaries and assured security create little incentive to do better. The creation of centers of excellence to publicly reward municipal employees for a job well done is a modest means for developing an incentive for improved performance, based on the premise that everyone loves the positive public spotlight. This could be equally applied to individual employees as well as groups of employees – such as particular teams of garbage collectors or a tax collection department. It is important that recognition be made public, and better still if the award or recognition is done at a public event – not just as part of the agenda for the municipal council meeting – and preferably with an article in the local newspaper. Even though very modest, such rewards can often produce competition with other departments or other employees. USAID’s current contractors in local governance could easily begin to introduce the idea and even assist in screening candidates for recognition at the outset.

C. Rule of Law

Opportunities and Constraints: Although the President’s actions replacing the Supreme Court and increasing his control over the judiciary were seen by many of those interviewed as an opportunity to begin large-scale improvements in the justice sector, they should also be viewed as a serious constraint to independence and development of a genuine or effective judicial branch. Present hopes and expectations for improvement are tied only to the substitution of individuals at the top of the system, not to institutional or systemic reforms. The President’s actions and declared intentions to control the judiciary⁷² violate fundamental concepts of independence, and threaten to continue and extend the political favoritism and influence that have permeated the justice sector and allowed corruption and impunity to reign. This could easily exacerbate, rather than cure, the underlying flaws in the justice sector and further undermine any potential credibility of the legal system. Initiation of projects within this context should be viewed cautiously.

The assessment team did not perceive significant interest, consensus, or commitment to reform within the legal and judicial sector. Absent strong political will to reform, success is unlikely. The new Supreme Court and climate of fear and retaliation within the judiciary may indeed spur improvement measures in the short-term, but serious long-term institutional changes are necessary to increase professionalism, transparency, and accountability. Projects to implement such changes ordinarily require substantial continuing support and cooperation from the Supreme Court President for an extended period; here, however, the President is limited to a one-year term, and he has already served two months of that term.

⁷² This is based on widespread reports of the President listing his priority cases for the courts to decide, announcing how specific cases should be decided, and declaring that the State should not lose cases.

Legal and judicial infrastructure exists and is already in place, or is planned, in many parts of the country. Justices of the Peace are staffed and operational in all municipalities, although underutilized and obviously in need of improvements. The existing physical structures and staff for this system provide an opportunity to increase access to justice at the local level, but further study and analysis would be needed to determine how that could best be accomplished.

Recommendations:

- ✓ Continue assistance to civil society organizations to develop and sustain external demands and advocacy for reforms including legal and judicial professionalism, uniform standards for judicial selection and discipline (in the Supreme Court, Council of Magistrates, and Magistrate Tribunal), transparency in selection and disciplinary proceedings, monitoring and accountability for ethical and legal infractions, reduction of political influence and intervention in judicial selection, discipline, and decision-making (in the Supreme Court, Council of Magistrates, and Magistrate Tribunal), increased independence of judiciary. Emphasize public monitoring, rating, and watchdog roles.
- ✓ Create linkages and broaden the base of civil society organizations involved with legal reform to establish networks and projects that incorporate non-legal actors and NGO's whose interests are or potentially could be affected by the justice sector and its performance, e.g., women's organizations, business organizations, environmental groups, etc. Start with the network of NGO's that came together and interceded in the selection of Supreme Court candidates, and build off of that group and the methods that they used successfully in that effort. Conduct seminars and workshops to explore and educate disparate groups on how the law affects their interests, how the legal system could be reformed and used to promote their organizational interests, and identify issues of common interest and goals that could be achieved through joint efforts.
- ✓ Continue to communicate and collaborate with other donors to see where assistance could best be leveraged for greatest impact and to assure that critical areas are being covered, and try to develop a joint strategy to complement each other's efforts. Explore whether the World Bank would contribute to further specific studies, such as the Justices of the Peace study (described below), assessments of the role and functions of the Solicitor General, *Tribunal de Cuentas*, *Contraloría*, or other key actors.
- ✓ Consider options and decide whether USAID should work with a judicial branch that has been so dramatically altered and affected by executive intervention and, if so, how the project would be managed to ensure efficiency and ability to compel compliance, which could pose problems. Direct USAID support could be interpreted as approval of executive manipulation. If USAID decides to work with the judicial branch, assistance should be conditioned on demonstrated meaningful activities and commitment (between now and the end of the current Strategy) by the judiciary to improved oversight, regulation, and enforcement of judicial selection and disciplinary standards. Such activities might include the creation of a separate internal affairs unit with adequate enforcement authority to monitor judicial misconduct and respond promptly to complaints (a type of "SWAT Team"), adoption and application of a code of ethics with serious sanctions and enforcement mechanisms, publication of results of disciplinary proceedings/investigation, development and application of standards for appointing lower court judges, implementation of merit-based selection of judicial personnel, initiation of performance evaluations, mechanisms for filing and investigation of citizen complaints.

If the Mission decides to work directly with the judicial branch and the conditions described in the preceding paragraph are met, support should be provided to⁷³:

- ✓ Establish standards for judicial selection and discipline along with monitoring and enforcement mechanisms (see preceding paragraph for specific examples). Support the Judicial School operated by Council. Here, it is critical to ensure that the standards are enforced, and that enforcement is meaningful.
- ✓ Improve court administration and case management practices to increase efficiency, transparency, accountability, and reduce opportunities for corruption at all levels, including lower level functionaries. Suggested activities might include separating administrative and judicial functions at the Supreme Court level to reduce administrative burden on justices (create a separate managerial position, with appropriate oversight and checks, to handle management tasks), implementation of merit-based selection of judicial personnel, initiation of performance evaluations, improvement of budgeting and procurement mechanisms to track expenditures and reduce political favoritism and opportunities for corruption, pressure on other branches to authorize and disburse constitutional allocation to judicial branch, supporting revisions to Civil Procedures Code to streamline processes and incorporate open hearings. Any activities undertaken should focus on qualitative elements and should complement and supplement other donor programs, which tend to emphasize technological improvements.
- ✓ Support efforts to build judicial independence. Activities might include separating political election cycles from judicial appointments, creating a centralized system for lower court judges and personnel to report pressure or political influence from above and assure appropriate investigation and sanctions, random case assignment in civil matters to prevent judge-shopping, pressure to de-politicize Council of Magistrates and Magistrate Tribunal by implementing and enforcing standards for decision-making and publishing results, etc.

Incorporate sufficient flexibility in design and planning to allow for reapportioning funds and adjusting programmatic emphasis between the judiciary and civil society actors, depending on the degree of consensus and commitment demonstrated by the judiciary. If work has been undertaken with the judiciary and is showing demonstrable meaningful results, then maintain a balance of programming between judicial branch and civil society projects. If work with the judicial branch is unlikely to translate into significant impact and institutional reform, then focus majority of assistance on supporting civil society.

If the Mission decides not to work directly with the judicial branch, then work primarily with civil society to increase judicial oversight, transparency, and accountability (see first two paragraphs above).

Strengthen the Office of the Public Defender. Activities might include design and implementation of merit-based selection processes, pre-trial and litigation skills training programs, institutional strengthening to balance the Prosecutor's Office and to fulfill constitutional guarantees of providing indigents right to counsel, professionalism and networking of public defenders nationally, conferences to identify failures/deficiencies in systems and representation and develop strategies and proposals for resolution.

⁷³ One way to address or reduce practical limitations presented by the short (one-year) term of the Supreme Court President might be to enter into a multiple-year agreement with the entire bench spanning the life of any or all of these projects, regardless of changes in the presidency.

Explore the role and potential use of Justices of the Peace. Most judicial reform efforts tend to focus on upper level courts. The majority of public experience and opinion regarding the legal system, however, is shaped at the lower court level. Building public confidence and credibility in the courts could prove fruitful at these lower levels of direct public contact, especially with Justices of the Peace. The advantage here is that they are already staffed and in place in all municipalities, reducing problems of initial investment and sustainability. An open question is why they are so underutilized, and whether they could be put to better use to improve local dispute resolution and access to justice. This question warrants further investigation and analysis through a separate study. Depending on the outcome of that study, initiatives that might be considered or undertaken include training of personnel, establishing a network for Justices of the Peace, improved monitoring and accountability, uniform data collection and reporting requirements, expansion or modification of their jurisdiction (for example, to handle minor criminal matters or to increase jurisdictional limits to relieve First Instance court congestion), public education programs to increase legal awareness and encourage their use, improved enforcement, alternative dispute resolution mechanisms, etc.

D. Other Recommendations

The following are recommendations that emerged in the course of the Assessment but do not easily fit into the main areas of strategy and recommendations above. We feel, nevertheless, that they are worth the consideration of the Mission.

- ✓ **Assistance in developing the technical capacity of the Congress:** Although much investment has been made in attempting to improve technical capacity in legislatures around the world, the results have been ambiguous. What is proposed here is an indirect approach, working through CSOs, the universities, or think tanks – and one that works directly with certain congressmen, rather than staff. As mentioned earlier, much of the skill of US Congressmen in certain areas is owed to assistance from lobbying organizations that provide data, written documents and statements, position papers, testimony, and sophisticated presentations to support the lobby group’s arguments. To apply these lessons to Paraguay, support might be given to CSOs and others to assist Congressmen in analyzing issues and preparing arguments for both the substantive commissions as well as the floor of the *Cámara* or the *Senado*. In part, this would require CSOs and think tanks to alter their lobbying strategies to emphasize working and collaborating with Congressmen to improve their understanding (through tutoring, perhaps) and ability to argue issues. The idea is to develop the expertise of the legislator – but from the CSO’s point of view. This is clearly a shift away from the demand advocacy approach typically employed by CSOs. This particular approach not only serves to upgrade the capacity of the interested Congressmen, but also improves the CSO’s advocacy abilities through alternative methods.
- ✓ **Assistance to the TSJE:** USAID should collaborate with the Tribunal Superior de Justicia Electoral (TSJE) to play a role in electoral campaign and political party finance. The assistance to the TSJE has paid off in spades: the result is an institution which institution that has proved to be an efficient and transparent administrator of the Paraguayan electoral process. This success has earned the TSJE a well-deserved reputation for credibility and impartiality that should now be harnessed to shine the light of public scrutiny on the financing of electoral campaigns, which many analysts acknowledge to be an opaque process and thoroughly corrupting influence in Paraguayan political life. USAID could offer technical assistance to the TSJE to provide it with the tools and capacity it needs to fulfill this important part of the Tribunal’s mandate.

List of Persons Interviewed:

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Agustín Carrizosa	President, CIRD
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Graciela Sánchez	Director, CISNI
Mercedes Argaña	CISNI
Lorenzo Livieres Guggiari	Director Ejecutivo, CEPPRO
Sonia Brucke	Human rights lawyer
Fernando Masi	Director, CADEP
Soledad Villagra	CEPES
Estela Cacase	CODEHUPY
Mirta Rivarola	CEPES
Jorge Abatte	Alter Vida
Luis Manuel Andrada	Director, Estudio Aduanera Andrada
Cristina Silvero	POJOAJU, Asociación de ONGs Paraguay
José Antonio Bergues	Consejero, ADEC
Max Haber	President, CIP
Gerald McCulloch	Camara de Comercio Paraguayo-Americana
Jorge Heisecke	Director, AGROPECO

Civil Society Focus Group:

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Juan Carlos Yuste	DECIDAMOS
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Sheila Abed	IDEA
Jesús Quintana	IDEA
Ignacio Uriarte	CRP
Pilar Callizo	Transparencia Paraguay
Teresita Silvero	Mujeres por la Democracia
Mercedes Talquero	Coordinador de Iniciativas
Ivonne Lugo	Acuerdo Ciudadano
Agustín Carrizosa	CIRD
Jorge Abatte	Alter Vida

Private Sector Association Focus Group:

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Eduardo Felippo	Vice President, UIP

Max Haber	President – Centro de Importadores
Jose Martín Palumbo	Federación de Productores, Industriales, y Comercio FEPRINCO
Oscar Doria	FEPRINCO
Oscar Jure Yunis	President, CAPECO
Jorge Heisecke	CAPECO
Ignacio Santiviago	CAPECO
Fabian Olmedo	CAPECO
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Hugo Sánchez Agüero	ARP

Department and Municipal Interviews:

Enrique Riera Escudero	Intendente, Asunción
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Humberto Blasco	Governor's office, Central Department
Enxo Cardoxo Jiménez	Governor, Caaguazú
Julio C. Mendoza	Municipal Government of Caaguazú
Carlos Lopez D.	Intendente, Caaguazú
Manuel Ramirez	Corte de Apelación, Caaguazú
Heriberto Gonzalez	Cooperativa Coronel Oviedo Ltda.
Esteban Torres Espinola	Governor of Guairá
Mary Cruz Andueza	Coordinadora, JOPOI
Federico Alderete	Intendente, Villarrica
Luis Rufino Fernndez	Dean, Catholic University, Villarrica
Padre Cevalino Peralta	Bishop, Villarrica
Feliciano González	Contraloría Ciudadana. Villarrica
Pedro Gaona, Edgar Elias Duarte	KOEYU, Campesino Committee
Juan Carlos Botino	Governor, Ñeembucu
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Nelly Servin de Isfran	Member, Consejo Municipal

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Isidro Roussillon P.	Governor, Presidente Hayes
Lucia Santacruz	Advisor to Governor of Cordillera
Nelly Servin de Isfrán	President, Red de Mujeres Municipales
Edgar Estigarribia	President AJUMPA, Asunción
Ruben Acosta Gallagher	Secretary General, AJUMPA, Asunción

Political Parties:

Herminio C. Cáceres	President, ANR (Partido Colorado)
Cándido Aguilera Fernández	Vice-President, Partido Colorado
Miguel Angel Ramirez	Former Senator, Partido Colorado
Eusebio Ramon Ayala	Senator, Partido Liberal
Miguel Carrizoza Galeano	Vice-President, Senate, Patria Querida
Jose Nicolas Morínigo	Senator, País Solidario
Rafael Filizzola Serra	Camara de Diputados, País Solidario

Government of Paraguay:

Victor Nuñez	President, Supreme Court
Luis Blanco	Magistrado, Corte Suprema
Neri Joel Kunzle	Juez de Primer Instancia de lo Civil
Carolina Llanes	Criminal Judge
Nelson Mora	Procurador General de la Nación
Dr. Humberto Insfran	Deputy Attorney General
Violeta González Valdez	Defensoria Pública
Alfredo Porro	Under-secretary of Justice
Blanca Ovelar de Duarte	Minister of Education
Dionisio Borda	Minister of Finance
James Spalding	Ambassador to the United States
Alberto Ramírez Zambonini	President, Trib. Superior de Justicia Electoral
Liliana Benitez	Director Public Relations TSJE
Rigoberto Larza	Director, Registro Electoral
Mario Estigarribia	Sub-contralor General de la República
Jose Maria Cabral	Dean Law School, Universidad Catolica

Various Analysts:

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Carlos Martini	Sociologist, Universidad Catolica
Antonio Carmona	Director, Ultima Hora
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Gustavo Laterza Rivarola	Political analyst

International Organizations:

Alvaro Cubillos	Interamerican Development Bank
Lynn Hammergren	World Bank
Peter Hansen	Country Representative, World Bank
Annette Schmidt	GTZ
Ariel Dulitzky	ICHR, Organization of American States

US Government:

James Buchanan
John Keene
Tomás Mesa

US Department of State
Ambassador
First Secretary, US Embassy

Wayne Nilsestuen
Steven Marma
Eduardo Bogado
Alfonso Velásquez
Raul Quiñones

Director, USAID
Chief, Democracy Office
Local Government Advisor
Development Assistance Specialist
Development Specialist, Civil Society

	OPPOSITION SECTORS		SUPPORT SECTORS			OPPOSITION SECTORS	
EXTERNAL SECTORS				IADB Brazil TAIWAN	IMF JICA US State GTZ USAID IBRD	Brazil private sector ADM? Cargill?	
Sector Position	Anti-system	Legal Opposition	Conditional Support	Core Support	Conditional Support	Legal Opposition	Anti-system
			Pres. Nicanor Duarte			March, 2004	
SOCIAL SECTORS	Small informal sector indigenous	Urban workers women	Small farmers Landless campesinos		Urban middle class	Large farmers (sojeros) industriales	
POLITICAL PARTIES		PAIS SOLIDARIO PEN	ANR - DF Organismo?		Dominguistas?	UNACE PLRA PATRIA QUERIDA	
PRESSURE GROUPS	FNC	Transport unions MCNOC ONAC Msr. Medina (contral. Ciud.)	Economic team Interior radio Pub. Empl. FFAA Teachers unions Local govt. orgs		FEPRINCO CENTRO IMP Ultima Hora UIP ARP CAPECO Church hierarchy	ADEC ABC Color APS CAP	NARCO-TRAFICKERS CONTRA-BAND Clandestine Industry Tobacco smugglers